Supreme
F
(1)
931792 JAN 10 1994
OFFICE OF THE CLERK

Number: _____

IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM 1994

THEODORE JONES, PETITIONER
vs.
STATE OF ARKANSAS, RESPONDENT
- and -
THE HONORABLE CHRIS PIAZZA
NOMINAL RESPONDENT

PETITION FOR THE WRIT OF *CERTIORARI*
TO: THE ARKANSAS STATE SUPREME COURT

PETITION FOR THE WRIT OF *CERTIORARI*

Submitted by:

Theodore Jones, *Petitioner*
c/o 1010 Gamble Road
Little Rock, *Arkansas*
United States of America

240 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the State of Arkansas deny Petitioner Assistance of Counsel by failing to fully inquire into Petitioner's reasons for objecting to the appointment of a State-Licensed Attorney, and by refusing Petitioner's request for a non-lawyer Assistant to provide Petitioner Counsel of a religious and logistical nature, at both plea, and later, at trial?

2. Did the State of Arkansas' interests in regulating the practice of law overcome the First, Fifth, and Sixth Amendment Rights of Petitioner, as an Accused Criminal Defendant [with a conscientious objection to the concept of state licensing] to Assistance of Counsel such as it existed at ratification of the Constitution for the united States of America and It's First, Fifth, and Sixth Amendments?

3. Did the State of Arkansas err in equating the term "Assistance of Counsel", as originally used in the Sixth Amendment of the Constitution for the united States of America, to exclusively mean Legal Representation by a licensed member of Arkansas' Integrated Bar?

4. Did the Arkansas' Supreme Court's presumption of correctness of a jury's oath in fact deny Petitioner Procedural Due Process and Trial by Jury in using Petitioner's omission of such oath to defeat Petitioner's challenge, when said omission is owing to the neglect of the State to keep a verbatim record of trial proceedings, as required by law?

5. Was it violative of Due Process for the trial court to enter a not-guilty plea for Petitioner, following Petitioner's special appearance, reservation of rights, and demurrer to the jurisdiction of the Court, said

demurrer going unanswered, and where both general personal appearance and jurisdiction remain unproven and contested throughout the record?

PARTIES TO THIS PETITION

The parties to this petition are the Petitioner, Theodore Jones, the State of Arkansas, and, nominally, the Honorable Chris Piazza, Circuit Judge for the Sixth Judicial District of Arkansas.

TABLE OF CONTENTS

HEADING — BEGINS ON PAGE

1. QUESTIONS PRESENTED .....I-III
2. LIST OF PARTIES III
3. TABLE OF CONTENTS IV
4. TABLE OF AUTHORITIES.....IV-IX
5. OFFICIAL REPORT OF DECISIONS.....01
6. JURISDICTIONAL STATEMENT.....02
7. CONSTITUTIONAL PROVISIONS, STATUTES, COURT RULES & ETC.....04
8. STATEMENT OF THE CASE.....05
9. STATUS OF STATE PROCEEDINGS.....13
10. FEDERAL INVOLVEMENT.....13
11. CERTIORARI THOUGHT JUSTIFIED.....13
12. SIGNATURE and PROOF OF SERVICE.....41,42
13. APPENDICES A-F FOLLOW PETITION

TABLE OF AUTHORITIES CITED

CASES — PAGE

Adamson vs Adamson, 9 Ark. 26.....54

Allen v. Phillips, 87 Ark. 185, 112 S.W. 403.....53

TABLE OF AUTHORITIES CITED - Continued

Anderson v. State,
34 Ark. 257(1879).....52

Argersinger v Hamlin,
407 U.S. 25.....10,34

Arizona v.Fulminate,
499 U.S.__, 1991 (slip op. at 8).....23

Brotherhood of Railroad Trainmen v. Vriginia ex rel. Virginia State Bar,
377 U.S. 1.....26

Cantwell v. Connecticut,
310 U.S. 296(1940).....34

Chiles v. State,
45 Ark. 143(1885).....52

Coleman v. Alabama,
399 U.S. 1 (1970).....45

Gideon v. Wainright,
372 U.S. 335.....27

Hurley v. State,
29 Ark. 17(1874).....50

Illinois v Allen,
397 U.S. 337 (1970).....45

In re MSD Woodworking Co., Inc.
132 B.R. 631(Bkrtcy.D.S.D.1991).....42

Lacefield vs The State,
34 Ark. 275.....64

Lay v. State,
42 Ark. 105(1883).....50

Leeper v. Texas,
139 U.S. 462, 35 L.Ed 225.....60

TABLE OF AUTHORITIES CITED - Continued

Mayer v. Chicago,
404 U.S. 189 (1971).....55

Meadors v. State,
130 Ark. 471, 197 S.W. 1153(1917).....50

Medlin v. Platte Co.,
8 Mo. 235, 40 AmD 135.....54

Rose v. Clark,
478 U.S. 570, 577-578(1986).....23

Ruble v. State,
51 Ark. 126, 10 S.W. 23(1888).....50

Ong Chang Wing v. U.S.,
31 Sup.Ct. 15, 16, 218 U.S. 272.....60

Perry vs The State,
37 Ark. 54.....64

Pointer v. Texas,
380 U.S. 400.....45

Powell v. Alabama,
287 U.S., at p 57.....46

Shelton v Tucker,
364 U.S. 479.....44

Simmons v U.S.,
390 US 389(1968).....28,38,45

State v. Dillingham,
43 Ark. 154.....64

State ex rel Mackintosh v. Superior Court for King County,
88 Pac. 207, 209, 45 Wash. 248.....60

State v. Marionneaux
120 La. 455, 45 S. 389.....54

TABLE OF AUTHORITIES CITED - Continued

South Carolina v. United States,
199 U.S. 437 (1905).....30

Tong v. State,
169 Ark. 708, 276 S.W. 1004 (1925)....51

United States v Dougherty,
473 F.2d 1113 (D.C. Cir.1972).....38

United States v. Johnson,
76 F.Supp 538.....37

United States v. Tarlowski,
(69-2 U.S.T.C. & D.C.-Ea.Dist.N.Y.)
305 F.Supp. 112(1969).....43

Von Moltke v. Gilles,
332 U.S.. 708(1948).....35

FEDERAL STATUTES CITED

STATUTE	PAGE
*** no Federal statutes relied upon ***	

FEDERAL REGULATIONS CITED

REGULATION	PAGE
*** no Federal regulations cited ***	

CONSTITUTION FOR THE UNITED STATES OF AMERICA

Article / Amendment Page

Article 6, Clauses 2,3.....3,36,47,48

Amendment 1.....3,47,48,49,53,57,64

Amendment 5.....3,47,48,49,53,57,64

Amendment 6.....8,16,36,47,48,57,64

Amendment 9.....47,48,64

CONSTITUTION FOR THE UNITED STATES OF AMERICA

Amendment 14.....48,49,53,57,64

ARKANSAS STATUTES CITED

Statute — Page

Arkansas Code of 1987, Annotated
§1-2-118 (Common Law Adopted).....55

Arkansas Code of 1987 Annotated
§16-85-707, Criminal Pleas.....62

ARKANSAS CONSTITUTION OF 1874

(*underline indicates abstract*)

Article / Amendment — Page

Article 2, Section 10.....58

MISCELLANEOUS MATERIALS CITED

Source — Page

Andre' Bonnichon,
Law in Communist China
(The Hague, 1956),pp. 24,26-32.....58

Blackstone, Commentaries on the
Common Law, Volume 3, page 317.....54

Fundemental Constitution for
the Province of East Jersey
(1683).....28

Federalist,Number
83.....28

The Origins and Historical
Understanding of Free
Exercise of Religion,
McConnell,103 Harv.L.Rev 1409(1990)..32

APPENDICES
(Following Petition in this Volume)

A.

Opinion of Arkansas State Supreme Court

B.

Abstract and Brief of the Petitioner

C.

Reply Brief of the State

D.

Rebuttal of the Petitioner

E.

*Letter of the Clerk of the United States Supreme Court *

F.

Constitutional Provisions and Statutes Relied Upon.

Number: _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

THEODORE JONES, PETITIONER
vs.
STATE OF ARKANSAS, RESPONDENT
- and -
THE HONORABLE CHRIS PIAZZA
NOMINAL RESPONDENT

PETITION FOR THE WRIT OF *CERTIORARI*
TO: THE ARKANSAS STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

OFFICIAL REPORTS OF DECISIONS BELOW

1. Opinion Arkansas State Supreme Court, delivered October 11, 1993 for case CR93-482, is officially reported at 314 Ark 383, and may also be found at 862 SW2d 273.

JURISDICTIONAL STATEMENT

Order from which relief sought:

(a) October 11, 1993 opinion of Arkansas Supreme Court, case CR93-482, affirming Hon. Chris Piazza, in Pulaski County Circuit Court case CR91-2776.

No reconsideration was sought below; No Cross-Petitions exist.

Constitutional and Statutory provision(s) believed to confer jurisdiction.

Judgment of Arkansas' State Supreme Court was entered October 11, 1993.(Appendix A). Typewritten Petition was submitted within 90 days of decision, per Rule 13.1 of this Court(while Petitioner was incarcerated). Petition returned by the Clerk(failure to comply with printing Rule). Printed petition was received by Clerk March 7, 1994. The Clerk returned that Petition, and retained filing fee

of Petitioner in anticipation of receipt of a corrected Petition. Please see Appendix E for letter of the Clerk.

Statutory jurisdiction invoked pursuant to 28 U.S.C. §1257(a).

Amendment 1 to the Constitution for the united States of America (CUSA), confirms the *People's* Right to petition for redress of grievances. Petitioner asserts self-executing Right exists to petition this Court for redress, outside of statutory jurisdictions created by Congress. The provisions of Article 6, clause 2, CUSA imply self-executing, inherent power to correct errors of law made by Judge(s) operating under oath(s) to support, defend, and uphold the CUSA. This position seems sound viewed in light of the demise of all appeals of right to this most honorable Court.

PERTINENT PORTIONS OF CONSTITUTIONAL PROVISIONS, STATUTES, COURT RULES, & etc. INVOLVED IN THIS CASE.

1. FEDERAL CONSTITUTIONAL PROVISIONS

Constitution for the United States of America Article 6, Clause 2, Amendment 1, Amendment 5, Amendment 6, Amendment 9, Amendment 14, Section 1 (Sections 2-4 not relied upon),Section 5.

2. FEDERAL STATUTES

United States Code, Title 28, §1257(a) (Criminal Appeals)

3. FEDERAL COURT RULES

No Federal Court Rules cited.

4. FEDERAL REGULATIONS (CODIFIED)

No Federal Regulations cited.

5. STATE CONSTITUTIONAL PROVISIONS

1874 Constitution of the State of Arkansas Article II, Section 10

6. STATE COURT RULES

*** no state rules cited ***

7. STATE STATUTORY PROVISIONS

Arkansas Code Annotated (1987), §1-2-118 (Common and Statute Law of England Adopted), Arkansas Code Annotated (1987) §16-85-707 (Criminal Pleas)

All of this matter is contained in Appendix F.

STATEMENT OF THE CASE

September 16, 1991, Petitioner accused of offenses of: carrying weapon; driving without driver's license, operating vehicle without license plate and inspection sticker; and failure to provide proof of insurance. Petitioner, appearing specially in propria persona, arraigned in municipal court over objections of lack of Assistance of Counsel, lack of personal jurisdiction, and lack of general appearance. Petitioner convicted at trial without a jury over continuing objections as aforesaid. Petitioner pursued the only non-futile State remedy to said conviction, trial *de novo*, all objections reserved without prejudice, and brought anew to the Pulaski County Circuit Court, case CR91-2776. Petitioner appeared

specially, made his demurrer, and plead "not guilty" by trial court, acting *sua sponte*. Refusing to determine Petitioner's plea to jurisdiction, Court tried and convicted Petitioner anew, over continuing objections, with improperly sworn jury. Petitioner was sentenced to six months in jail and fined $3,250.00. Appeal taken to the Arkansas State Supreme Court, case 93-482, conviction affirmed. Petitioner stands convicted of violations of Arkansas Code Annotated §5-73-120(carrying weapon); §27-16-602 (no driver's license); no license plate(27-14-304); no inspection sticker (§27-30-109); and no proof of insurance (§27-22-104). Thus comes on now this

Petition for Certiorari to the United States Supreme Court for consideration.

HOW FEDERAL QUESTIONS WERE RAISED IN THE STATE COURTS

Petitioner respectfully submits he was unlawfully convicted in Little Rock Municipal Court of misdemeanor charges, enumerated *supra*. Petitioner exercised the only non-futile option available under State law, appeal *de novo*, to Circuit Court of Pulaski County without prejudice to ongoing objections. Petitioner, under threat of physical arrest, attended a plea and arraignment November 21, 1991. No formal, general appearance made in the legal sense of the word by Petitioner. When called upon for appearance and plea, Petitioner questioned the Court as to the Cause and Nature of the Charges against him. Appendix B 13-14. The Court refused to entertain on-point

questions regarding specific nature of proceeding, complaint, and Court's jurisdiction. The Court required Petitioner to plead or be plead not guilty by Court. Petitioner, without Assistance of Counsel, made special plea/demur challenging jurisdiction. Rather than determine plea, the Court entered **It's** plea of "not guilty". Arkansas permits this only where Accused refuses to plead. Petitioner objected that he was entitled to answers under the 6th Amendment to the CUSA Appendix B 15. The Court was asked to make legal determinations involving 6th Amendment and the ongoing proceedings, which it refused to do. Appendix B 16. After the Court's irregular entry of plea of "not guilty", Appellant moved for record to show continuing objections. The Court

recanted briefly, but when confronted with a legal objection to the charging instrument, stated: "I am not worried about whether it is illegal." Appendix B 17. At omnibus hearing of February 6, 1992, Petitioner, again before court specially, without general appearance, immediately attempted to make reservation of all rights without prejudice, using the form prescribed by §1-207 of the Arkansas Uniform Commercial Code. Petitioner took up a pre-filed motion for non-licensed counsel of choice, continuing to stand on prior reservations of rights. The Court offered to appoint a licensed attorney at this hearing, but refused to permit anyone save licensed attorney to assist Petitioner, and objection was made. Appendix B20. The Court stated Petitioner was waiving the right to

Counsel, and Petitioner stated: "I waive no rights, Sir, I am still demanding my right. The Court is denying me that right." Appendix B 21.

Trial held October 23, 1993. Petitioner had yet to enter a general appearance, going forward without prejudice to any, and over all, standing objections. The Court noted Petitioner had previously "pulled out" *Argersinger v Hamlin* (407 U.S. 25 1972) after having been sentenced following a previous trial without counsel in same court. Appendix B 25. Petitioner demanded Assistance of Counsel by someone not a licensed attorney, and that demand was denied. Appendix B 26-27. The Court squarely denied Petitioner Assistance by a non-licensed Person behind the rail at trial. Appendix B 27. Petitioner objected he

had a right under the Arkansas Constitution to be heard by himself and by counsel. Petitioner objected he was uninformed as to the Nature of the charges, and to the Court's failure to rule on the jurisdictional plea/demur. Petitioner objected to lack of presentment of a proper complaint, indictment, or information, and requested dismissal without proof of same on record. Appendix B 28-29. The Court later Itself placed an exhibit in record, acting in behalf of prosecution. Appendix B 93. Petitioner asserted Sixth Amendment right to be informed of the above facts, and stated for the record he had not plead to the charge, but had demurred. Appendix B 29.

Over these objections, a jury was selected. Petitioner attempted to

secure a jury which understood it's unreviewable common law powers to ignore instructions as to matters of law and to vote It's conscience. Petitioner asked for a new panel if none of the current panel would say they could examine two apparently conflicting laws and give fair consideration and attention to both. Appendix B 29. The Court continually interrupted Petitioner's questioning of panel, commenting to the jury that Petitioner's questions were improper, notwithstanding a long line of decisions from Arkansas' Supreme Court properly hold jurors competent to judge law and fact together. Appendix B30 - B31. The jury was given an oath, which was unlawfully omitted from the *verbatim* record. Petitioner objected the jury was improperly sworn, citing

precedent of the Arkansas Supreme Court in support thereof. The objection was overruled. Appendix B 32 to B 33. Petitioner, on appeal to the Arkansas State Supreme Court, raised five points of error, which appear in Appendix B 12-13. The entire State appeal is abstracted within this Petition, appearing in Appendices B to D. Each Federal Question for which review is sought was raised and briefed in State's appellate process. Petitioner served jail time, served additional time for fines unpaid, and remains in jeopardy of enhanced sentencing in the very likely event he is charged with further traffic offenses.

FEDERAL COURT INVOLVEMENT

There is no known involvement in any federal court.

REASONS AND LAW THOUGHT TO JUSTIFY EXERCISE THIS COURT'S DISCRETIONARY

REVIEW POWER BY WAY OF THE WRIT OF CERTIORARI

(i)

REASONS THOUGHT TO JUSTIFY CERTIORARI

Petitioner offers the following regarding the Counsel issue:

Petitioner makes three arguments regarding Assistance of Counsel. Firstly, Petitioner's deeply held religious beliefs wholly preclude retention and use of State-Licensed Attorneys as Assistance of Counsel. Petitioner submits the inalienable right to freely exercise religious convictions in the selection of Counsel outweighs the limited interests of Arkansas in prohibiting non-licensed persons from assisting Petitioner in criminal trials. Petitioner respectfully submits Arkansas erred in refusing a request for lay assistance without first attempting to ascertain why Petitioner could not accept

appointment of a State-Licensed Attorney to Represent him at trial.

Secondly, the term Assistance of Counsel, as understood by Drafters of the Constitution of the United States of America does not exclusively contemplate Representation by a State-Licensed Attorney, but traditionally encompassed as well Assistance by one in whom an Accused placed Faith and Trust. Petitioner requested State Supreme Court to distinguish between Representation by an Attorney, and Assistance of Counsel, which was not forthcoming, to Petitioner's prejudice, as the terms are historically both discreet and diverse.

Thirdly, the term Assistance of Counsel did not, in 1791, exclusively contemplate only Representation by licensed members State Bar

Associations. The Right to Assistance of Counsel is inalienable, being recognized, not given, by the CUSA. It existed before the CUSA, and encompassed [in 1791] assistance by Laymen as well as Lawyers, and that Right, remaining inalienable today, has been infringed by Arkansas in refusing Petitioner Assistance by trusted lay Counsel, all circumstances considered.

CIRCUMSTANCES THOUGHT TO JUSTIFY DISCRETIONARY REVIEW OF QUESTIONS ONE THROUGH THREE.

There is a small community of Christians in this Nation who conclude, based on current events interpreted in light of Holy Scripture, that the Kingdom of Heaven will shortly arrive. These Christians, applying the Biblical test "by their fruits ye shall know them", conclude that present forms of government are now so influenced by

Satanic Forces, "spiritual darkness in high places", that no righteous man can place complete trust in Governments or Their Agents. For individuals of this Belief, the use of licensed Doctors, Lawyers, and others who ply their trades under Licenses of Government seems ill-advised, under the maxims that "a man can not serve two masters" and "what comport hath Light with Darkness". In the instant case, and others like it, the Petitioner was placed in a classic Catch 22 position. Petitioner could go to criminal trial without Assistance of Counsel, or could abandon his Beliefs, and embrace State-Licensed Counsel, which is part of the Order Petitioner seeks to avoid to the greatest practicable extent. Petitioner seeks a clear, binding precedent to guide all concerned Parties, to bring

about a state of agreement regarding the nature of the Right of Assistance to Counsel within this Free-Exercise context.

Religious Basis of Petitioner's Objection to Licensed Counsel

Petitioner holds as an article of Faith that he must avoid entanglement and subservience to all Men holding False <non-scriptural> Beliefs, and with Systems which deny the supremacy of the Creator. False gods, Men, and Systems which men trust in and hold higher than the Creator are understood to be modern analogs of the "Baal gods" of the Old Testament. "Baal", *inter alia*, encompasses worship of Creation, Money, or Things, including persons, and any institution holding Man's Laws, Creations, Commerce and Traditions superior to the Creator's. Knowing submission, or sacrificing (giving of

one's money, time, or service) to Anyone or Anything refusing to acknowledge, respect, and adhere to the Natural Laws of the Creator is, to Petitioner, clearly the practice of Baalism. Knowing, willful compliance with Baalist laws is clearly understood by Petitioner to constitute "worship" of Baal. Petitioner understands this to encompass, among other things, securing "licenses" granted by Men, whereby to do something lawful to Nature's Creator, yet, which, absent "license", is illegal according to Men.

Petitioner understands the Faithful may have no willing intercourse with the Unfaithful, as They are to remain a peculiar people, separate from the World. Petitioner's beliefs collide with statutes of the State of Arkansas, which seek, *inter alia*, to compel

Petitioner to obtain sundry "licenses" from It to do things needful to Petitioner's survival and well-being, including travel in automobiles.

Petitioner is oft charged with petty offenses, occasioned by the practice cf His Beliefs, and consequentially comes before Arkansas' courts on this account. Petitioner is approaching 76 years of age and will not repent of his Beliefs for comfort or convenience. Indeed, Petitioner spends months at a time incarcerated, preferring prison to the "bending of his knee to Baal". Petitioner finds it impossible, for reasons of Piety and Conscience among others, to deal with State-licensed attorneys, for they appear to be practitioners of Baalism.

Thus Petitioner can not assert the Right to Assistance of Counsel in

Arkansas' Courts without abandoning His Beliefs; there are seemingly no statutory or judicial provisions in Arkansas whereby Petitioner can have unlicensed Assistance of Counsel. The trial court, by denying Petitioner an unlicensed Assistant, forced Petitioner to choose between his Faith and trial bereft of logistical, legal, or moral assistance of any ilk. This in Truth was no Choice. Petitioner was improperly arraigned and tried without Assistance of Counsel, over his objections to licensed counsel, and despite his desire for Assistance of Counsel. The Trial Court summarily refused repeated requests for non-licensed assistance. No inquiry was made by the Trial Court to ascertain the full basis of Petitioner's motives, the qualifications or identity of the

proposed assistant, or why Petitioner felt so strongly that he could not accept an appointed attorney. Petitioner did make it clear, by written motion and oral requests that he desired Assistance of Counsel, distinguished from having a licensed attorney "appear" for and "represent" him. Petitioner, due to his age, <u>needed</u> an assistant to be present behind the bar at plea and at trial, to order papers, exhibits, and inform Petitioner of any missed remarks of opposing counsel (Petitioner is hard of hearing). Petitioner was at such a disadvantage that this point was not argued as well as it could and should have been, but this lapse is wholly a result of the State Court's denial of Petitioner's right to Assistance of Counsel. The error was not harmless,

deprived Petitioner of the basic, fundamental Right to Assistance of Counsel, and was objected to as best as Petitioner knew how. Petitioner has, due to his particular religious beliefs, and the prevailing practice in Arkansas' Courts, been denied all Assistance of Counsel. The State proceeded against Petitioner through two attorneys, assisted by support staff - all of which hardly seems just or fair. Such an error would not seem "harmless", having deprived Petitioner of one of the:

> **"...basic protections [without which] a criminal trial cannot reliably serve it's function as a vehicle for determination of guilt or innocence...".** Please see *Arizona v.Fulminate*, 499 U.S. __, 1991 (slip op., at 8), quoting from *Rose v. Clark*, 478 U.S. 570, 577-578(1986).

Any and all unartful practice and procedure, from first appearance onward, lays directly upon the

shoulders of Arkansas, inasmuch as Petitioner's inalienable right to Counsel was, in fact, denied.

LEGAL BASIS OF POSITION

Petitioner concedes Arkansas has some interest in regulating the practice of law before It's Courts. The Arkansas Supreme Court and Arkansas' "Integrated Bar" regulate Bar admission through several devices of no import here. Petitioner, in the following argument would hope to convince this Court to select this case for review, and, ultimately adopt the position that State interest in regulating such practice, however legitimate and desirable, fails to overcome the personal Right of Petitioner, as one charged with a crime, liable to jail time, and unable to deal with Licensed Attorneys due to his Beliefs, to

Assistance of Counsel. Petitioner would urge that, even if Arkansas' interests in regulating law practice generally prove paramount to the right to Counsel, that interest is not sufficient to justify the denial to this Petitioner, in this instance, due to the irreconcilable conflict between the State's interests and Petitioner's inalienable Right to Free Exercise of Religion. Such application would unjustifiably interfere with the practice of Petitioner's Religion, by requiring Petitioner to enjoy Assistance of Counsel only at the expense of his Religion, or vice versa. Arkansas can not in good faith challenge Petitioner's adherence to his Beliefs, as he has suffered numerous periods of imprisonment rather than recant those Beliefs. Further, the

trial court did not fully inquire into Petitioner's reasons for declining appointment of a licensed attorney as it should have in view of the unusual circumstances.

THE INTEREST IN REGULATION

The States regulate the practice of law in a more or less uniform fashion, limiting the right to *represent* others to licensed attorneys. While there is great potential for mischief which this regulation attempts to address, it was said by this Court, in *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1:

> **"A state cannot, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen can not be expected to know how to protect their rights when dealing with practiced and careful adversaries, *cf. Gideon v.***

Wainright, 372 U.S. 335, and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics."

In this instance, the Accused desired Assistance of Counsel; further, he specifically desired Unlicensed Christian Counsel, and, for reasons of Religious Belief, could not accept State-Licensed Counsel. Petitioner was forced to trial without benefit of Counsel. The first three questions of this case present an subtle interplay between Rights secured by the First and Sixth Amendments. There is also present the issue of Petitioner's being required to surrender one constitutional right in order to assert another, a dilemma held to be **intolerable** by this Court in *Simmons v U.S.*, 390 US 389(1968).

Whatever the Pre-Revolutionary British practice, it appears the Colonists and Revolutionary America in general understood the right to Assistance of Counsel to include the right to appear in person, or by a trusted friend. The *Fundamental Constitution for the Province of East Jersey* (1683) plainly declared:

> **... and in all courts persons of all persuasions (sic) may freely appear in their own way, and according to their own manner and there plead their own causes themselves, or if unable, by their friends..."**

The Founding Fathers used language with precision,. The Constitution's words should be given their natural, everyday meanings, as Hamilton said in *Federalist Number 83*. In Hamilton's rebuttal of the Opposition's allegations regarding the legal import of the then-proposed Constitution's

lack of a specific mandate preserving the right to trial by jury in civil trials:

> **" The rules of legal interpretation are rules of common sense, adopted by the courts in the construction of the laws. The true test, therefore, of a just application of them is its conformity to the source from which they are derived.", and;**
>
> **"...the natural and obvious sense of its provisions, apart from any technical rules, is the true criterion of construction."**

Hamilton railed against strained and narrow construction. Had the Founding Fathers understood the right to Assistance of Counsel to encompass merely the right to have an *attorney* appear for and represent an Accused, they would certainly have availed themselves of the word "*attorney*", whose meaning then, as now, contemplates one who "*represents*", "*speaks for*", and "*manages*" the legal

affairs and actions of another, generally for paid consideration. As was said in *South Carolina v. United States*, 199 U.S. 437 (1905):

> **"The Constitution is a written instrument. As such, its meaning does not alter. That which it meant when it was adopted, it means now."**

It seems fantastic to think that men who had just waged bloody war to throw off the yoke of a despotism based on Nobility, Privilege, and Class would, in setting up New Guardians of their Liberty, willfully restrict access to the courts to only those privileged persons upon whom some governmental organ had previously bestowed an official imprimatur of sorts. Petitioner urges that the term "Counsel", as commonly understood at the time of ratification, specifically encompassed laymen and common lawyers

as well as professionally practicing attorneys. To read into the CUSA a prohibition against Petitioner receiving behind-the-bar Assistance from a trusted non-member of Arkansas' monopolistic "Integrated Bar" seems both a strained construction and a perpetration of grievous violence to the intentions of Hamilton, *et al.*

Petitioner's religious beliefs precluded use of State-licensed counsel. It appears from the history of the Free Exercise Clause that it's objective was to prevent any governmental interferernce with religious practices, absent some profoundly compelling interest. Petitioner found the article mentioned by Justice Souter in His concurring opinion in *Church of the Lukumi Babalu Aye, inc. v. City of Hialeah*, The

Origins and Historical Understanding of Free Exercise of Religion, McConnell, 103 Harv.L.Rev 1409(1990) quite illuminating. Petitioner urges that the history of this Nation and the Free Exercise Clause do indeed indicate that the whole purpose of that Clause was to allow one to do all those things necessary to fulfill his individual duty to God, save in cases where that fulfillment actually damaged or threatened another, or ran counter to most pressing needs of the State. Petitioner simply can not accept as Counsel one who partakes of Arkansas' unnatural licensing schemes, it puts him at enmity with God inasmuch as it is Petitioner's spiritual duty to flee from evil and peaceably resist it as he may. Further, by submitting to licensed, appointed counsel, Petitioner

would be practicing Hypocrisy, arguing Freemen require no license on one hand, while legitimizing the argument for license in accepting the proffered attorney on the other. Petitioner can not in good conscience call black white and white black, even though it inures to his rhetorical benefit. Arkansas would have lost nothing in granting the reasonable request for someone to aid Petitioner in presenting his case to the Trial Court, Petitioner suffered deprivation of one of the premier Rights of Freemen - support, aid, and succor in his hour of trial. A balancing of interests, following judicial inquiry, should have favored Petitioner. No inquiry was conducted.

The Free Exercise of Religion Clause has been applied by this Court to the States by *Cantwell* v.

Connecticut, 310 U.S. 296(1940). That clause limits exercise of governmental powers that burden religious exercise, either by object or actual effect. Arkansas has an affirmative duty to insure any Accused liable to jail time has had an opportunity to secure Assistance of Counsel at every stage of a criminal proceeding, or has knowingly and intelligently waived that right, as it was held in *Argersinger v Hamlin*, 407 U.S. 25:

> **"We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel. Under the rule we announce today every judge will know, when the trial of a misdemeanor starts, that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel."**

Arkansas has been given a duty to inquire, and see any waiver of Counsel

is made knowingly and intelligently. As said by this Court in *Von Moltke v. Gilles*, 332 U.S. 708(1948):

> "The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused - whose life or liberty is at stake - is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused." To discharge this duty properly in light of the strong presumption against waiver of the constitutional right to counsel, a judge must investigate as long and as thoroughly as the circumstances of the case before him demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility. To be valid such *waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof*, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of

> **counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered."**

Never in the record has this Petitioner knowingly or intelligently waived his Right to Assistance of Counsel. No where has Petitioner been made to clearly understand the *Nature* of the charges brought, which appear to be based on civil revenue statutes by nature, which are enforced with criminal penalties using process that appears Commercial in Their Nature and Operational Effect. Petitioner sought Assistance of Counsel, as contemplated in Article VI, §§2, 3, and the Sixth Amendment, CUSA, at each and every stage of the proceedings, from plea forward. Petitioner did not seek, and in fact, rejected attempts of the Trial Court to appoint some lawyer to

REPRESENT Petitioner. This would have denied both the option and the Personal Right to continue in his ongoing Challenge to the unproven Jurisdiction of the Trial Court, which Right Petitioner understands must be claimed personally, rather than through an attorney, much like the 5th amendment right against self-incrimination. As it was said in *United States v. Johnson*, 76 F.Supp 538:

> **"It is a fighting clause. It's benefits can be retained only by sustained combat. It cannot be claimed by an attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person."** (Emphasis added)

Additionally, to accept *REPRESENTATION* by an appointed *ATTORNEY* would have practically removed Petitioner's Right to appear and defend *in propria persona*. The right to Assistance of Counsel and the Right to personally

confront one's accusers ought not be mutually exclusive. Again, one Right must be waived, under current Arkansas practice, to secure another. Such practice is Intolerable! *Simmons v. U.S.*, 390 US 389(1968). Indeed, Arkansas' Constitution, Article 2, section 10, enshrines the right to be heard both by one's counsel and *in propria persona*:

> **"In all criminal prosecutions the accused shall enjoy the right ... to be heard by himself and his counsel."**

It was said in the case *United States v Dougherty*, 473 F.2d 1113 (D.C. Cir.1972), a case similar in many respects to this one, that:

> **"An accused has a fundamental right to confront his accusers and his 'country', to represent himself and his position to the jury not merely as a witness or through a 'mouthpiece' but as a man on trial who elects to plead his own cause."**

There nine anti-war protestors on trial for trespassory entry into Dow Chemical Company's offices asserted the right to appear personally under 28 USC §1654. The Government urged the trial court's denial of personal appearance be upheld, theorizing that "possible disruption" of the trial by self-representation justified denial of right of the accuseds' to personally appear. The Court discussed the possibility that the right of appearing in person could be waived by bad courtroom behavior, but that, aside from such behavior, opined the Right was not to be denied merely to avoid a difficult trial, and stated:

> **"Given the general likelihood that pro se defendants have only a rudimentary acquaintanceship with the rules of evidence and courtroom protocol, a measure of unorthodoxy, confusion and delay is likely, perhaps inevitable in pro se cases. The energy and time**

> toll on the trial judge, as fairness calls him to articulate ground rules and reasons that need not be explained to an experienced trial counsel, can be relieved, at least in part, *by appointment of an amicus curiae to assist the defendant.* **(Emphasis added). If defendant refrains from intentionally obstructive tactics, amicus would be available provide advice on procedure and strategy. The utility of an amicus appointment is dependant on explanation to and cooperation by defendant, and on understanding, too, that he may claim with some merit that his** *pro se rights include his right to appear before the jury in the status of one defending himself, and that this is defeated if a too conspicuous role is played by an attorney, unless it clearly appears to the jury that he does not have the status of defense counsel.*" **(Emphasis added).**

The Dougherty reasoning clearly shows that Petitioner did not ask anything of the trial court which was impossible, that is, TO APPEAR PERSONALLY BEFORE THE JURY WITHOUT REPRESENTATION BY A DEFENSE COUNCIL, BUT WITH ASSISTANCE FROM SOMEONE WHO WOULD NOT MANAGE OR RUN THE CASE FOR

DEFENDANT. Petitioner clearly asked the Arkansas Supreme Court to distinguish between **Assistance of Counsel** and **Representation by a Licensed Attorney**, but the Court declined to address that distinction. Please see Appendix B, State Appeal: Abstract and Brief of Appellant, page 82.

Petitioner urges that the Trial Court could and should have permitted an unlicensed person to assist Petitioner behind the bar, as contemplated in *Dougherty, supra*. The Right of Petitioner to Assistance of Counsel was far more compelling than the interests of the State in insuring no one practiced "law" without license in this case. Also, please see *In re MSD Woodworking Co., Inc.* 132 B.R. 631 (Bkrtcy.D.S.D.1991), where a corporation was allowed, in the

interests of Justice, to appear in a civil bankruptcy proceeding by it's president - clearly practice of law by "modern" definition. Petitioner has learned that an association, *Advocates for Battered Women, Inc.*, is routinely permitted by Pulaski County Courts to Assist It's clients in preparing and arguing for protective orders under Arkansas Domestic Abuse statutes. Non-attorneys are said to be involved in this process, reportedly filling out petitions and giving support as necessary to aid petitioning clients to present their requests to the Courts. Petitioner applauds this situation, but questions why non-attorney assistance of civil litigants is Kosher, and yet, non-attorney assistance for Petitioner in criminal matters is Insufferable.

It was held that denial of Counsel encompasses refusing to allow the continued presence of a non-lawyer in a governmental office where a Citizen was being questioned. Please consider *United States v. Tarlowski*, (69-2 U.S.T.C. & D.C. Ea.Dist.N.Y.) 305 F.Supp. 112(1969). As a result of the refusal of the IRS to allow a Citizen to continue to be counselled by an accountant during questioning, a motion by the Citizen to suppress evidence was granted. The *Tarlowski* court said:

> **"For a government official to mouth in a ritualistic way part of the warning about the right to counsel, while excluding the person relied upon as counsel is, in effect, to reverse the meaning of the words used."**

Petitioner urges the State ought to have found a less restrictive means of achieving It's ends than denial of Petitioner's Right to Assistance of

Counsel. Petitioner would argue that this Court's holding in *Shelton v Tucker*, 364 U.S. 479 required accommodation of Petitioner's conscientious and other objections to licensed representation. Therein it was said:

> **"...if there are other reasonable ways to achieve those goals** *with a lesser burden on constitutionally protected activity*, **a state may not choose the way of greater interference. If it acts at all, it must choose less drastic means." (Emphasis added)**

It seems the right to plead one's own cause, as long as one is not deliberately subversive, dilatory or obstructive, is not subject to waiver by implication. Please consider *Illinois v Allen*, 397 U.S. 337 (1970). Nor should the Right to Assistance of Counsel and the Right to confront one's own accusers [*Pointer v. Texas*, 380 U.S. 400] be mutually exclusive, as

that would seem intolerable under *Simmons v. U.S., supra.*

As Petitioner had no Assistance of Counsel, any failure to preserve or argue issues of Constitutional import should not be held against Petitioner. Please consider *Coleman v. Alabama*, 399 U.S. 1 (1970), wherein it was said:

> **"Plainly the guiding hand of counsel at the preliminary hearing is essential to protect the ... accused against an erroneous or improper prosecution."**

While the *Coleman* Court was speaking to counsel in the sense of a "lawyer", would and should not this reasoning also encompass the aid and assistance an Accused would draw from Counsel of His Choice? The layman attending Petitioner's hearing in this case pointed out a several procedural failures on the part of Petitioner afterward. Had these been pointed out

during the hearing, Petitioner would have handled things differently. Plea and arraignment seems a "critical stage" of the proceedings, within the meaning of *Powell v. Alabama*, 287 U.S., at p 57. Petitioner respectfully submits that Arkansas erred by: trying Petitioner without benefit of Assistance of Counsel; by failing to inquire fully into the reasons Petitioner could not accept the offer of an appointed attorney; by refusing a lay assistant in light of Petitioner's Religious convictions; and by failing to distinguish the term "Assistance of Counsel" from Representation by Attorney" when interpreting the CUSA, in violation of Article VI, §§2,3, and Amendments 1, 5, 6, 9, and 14. These provisions are thought violated by Arkansas':

(a) interfering with Petitioner's Right to Free Exercise of Religion, when It sought to force Petitioner to Associate and Collaborate with a licensed attorney, contrary to His Beliefs;

(b) denying Petitioner the Due Process of a Criminal Trial pursuant to the CUSA and State Constitution;

(c) by denying Petitioner Assistance of Counsel under color of regulating legal practice;

(d) by doing all of this contrary to the inalienable, reserved Federal Rights of Petitioner, applied to Arkansas' actions via the Article 6, §2,3, and the 1st, 5th, 6th, 9th and 14th amendments, CUSA.

WHEREFORE, the Petitioner respectfully petitions for certiorari review of Questions 1 through 3, upon the grounds aforesaid.

SPECIAL CIRCUMSTANCES THOUGHT TO JUSTIFY DISCRETIONARY REVIEW OF QUESTION FOUR

The balance between Power to prosecute and the Procedural Protections afforded by our Common Law and National Constitution has served our People well, standing the test of time. The Cornerstone of Procedural Protections is the Power of Judicial Review, without which we revert to a government of Men. Judicial Review requires records of criminal trials be kept; without records the protections of the Constitution become mere window dressing. The Record thwarts the tendency to take shortcuts, move expeditiously, and to develop "uniform"

methods of dispensing individualized Justice. This question directly addresses, in a Due Process context, whether or not a State must keep an accurate record of criminal proceedings.

STATE'S DUTY TO KEEP ACCURATE TRIAL RECORDS

Arkansas' Judicial precedents place the burden on appellants to establish error by abstracting sufficient material to clearly illustrate the point upon which they rely for relief. This does create, in this instance, an insurmountable burden which, Petitioner would urge, is violative of Due Process and Equal Protection clauses of the CUSA. Petitioner, at trial, timely and specifically challenged the oath used to swear the jury. See Appendix B 31. The Trial Court overruled the objection at Appendix B 33, and the Arkansas

Supreme Court affirmed for want of a record of the oath given. Appendix A 5-6. Under Arkansas decisions, the objection was preserved, having been made before trial, and not after the verdict. Please see *Ruble v. State*, 51 Ark. 126, 10 S.W. 23(1888); *Meadors v. State*, 130 Ark. 471, 197 S.W. 1153(1917). The oath is presumed correct, in the absence of a showing to the contrary. *Hurley v. State*, 29 Ark. 17(1874); *Lay v. State*, 42 Ark. 105(1883). Due to oversight on the part of the Court's Reporter, the oath itself was not recorded verbatim, it being merely noted that the jury was sworn. Petitioner was tried over an objection to the oath given the jury, was convicted, sentenced, and whisked off to jail immediately. Petitioner remained in jail, and had to rely upon

lay friends to get his record ordered and filed in the Arkansas Supreme Court. It is a virtual miracle Petitioner got his State Appeal heard at all, it being assembled and transcribed from scrawled notes in a piecemeal fashion. Petitioner was not permitted to contact operatives to secure *nunc pro tunc* correction of the record. A bystander's bill of exceptions to fill the gap in the record presented by the State's failure to record the oath is not permitted in this instance. Please see *Tong v. State*, 169 Ark. 708, 276 S.W. 1004 (1925). It has been held unnecessary to enter the petit juror's oath verbatim, and the Supreme Court (of Arkansas) will presume, in the absence of a contrary showing, that oath regularly given, but that if the form of oath

administered is entered of record, and appears not to be in substance and legal effect the oath prescribed by law, it will be error. Please see *Anderson v. State*, 34 Ark. 257(1879). Grade of the offense appears to have nothing to do with the requirement of a proper oath. Please see *Chiles v. State*, 45 Ark. 143(1885). The issue of the form of the oath being contested at trial, the Court ought have insured a complete record thereof was made. Petitioner has been prejudiced by the inability to secure a record of the oath, as this is the reason the Arkansas Supreme Court gave for not considering his arguments in relation thereto. Petitioner was also without Assistance of Counsel at this time. Under these peculiar circumstances, it is oppressive, and contrary to CUSA

amendments 5 and 14 to place the burden of proof on Petitioner. Shall the State be allowed to profit from It's own lack of diligence under these conditions? If this be so, why make a record at all? If expediency of Justice were the polestar, all criminal appeals could be determined summarily. Historically, Records are kept as a memorial to the activities of the Court, and serve to preserve public confidence in the impartial administration of Justice. Please see *Allen v. Phillips*, 87 Ark. 185, 190, 112 S.W. 403. Arkansas' Circuit Courts, are Courts of Record, having a seal and keeping perpetual memorial of <u>all</u> proceedings, according to the ancient common law practice. Please see *Adamson vs Adamson*, 9 Ark. 26. Blackstone, in his *Commentaries on*

the Common Law, Volume 3, page 317, says of the common law record:

> **"The record is a history of the most material proceedings in the cause entered on a parchment roll, and continued down to the present time; in which must be stated the original writ and summons, all the pleadings, the declaration, view or oyer prayeed, the imparlances, plea and replication, rejoinder, continuances, and whatever farther proceedings have been had; all entered verbatim on the roll; and also the issue or demurrer, and joinder therein."**

At common law, acts not appearing of record appear to have been considered void. Please see *Medlin v. Platte Co.*, 8 Mo. 235, 40 AmD 135, *State v. Marionneaux*, 120 La. 455, 45 S. 389. Arkansas by statute declared the common law of England to be the Rule of Decision absent more modern guidelines, and where applicable to Republican government. Please see Arkansas Code Annotated §1-2-118. Additionally, this Court, in *Mayer v. Chicago*, 404 U.S.

189 (1971) required the States provide indigent appellants a record of sufficient completeness to permit **proper** consideration of their claims on appeal, even in petty offenses. In consideration of equality before the law, this seems to imply all appellants must have access to a sufficient record to permit consideration of Federal claims. Arkansas' failure to record the jury oath has procedurally forfeited the opportunity to present the Federal claim that the jury was sworn to Petitioner's prejudice. Arkansas' case law appears to show, assuming veracity of Petitioner's allegations, that the jury was sworn to his prejudice, and contrary to Arkansas' legal requirements. Petitioner would urge that the Federal right to a jury trial means trial to a sworn jury operating

according to the course of the common law of England, circa 1791. The Trial Court refused to allow the jury to be sworn to operate according to the course of the common law. Appendix B 119, abstracting Trial Record(161:14). The substance of Petitioner's objections, which do appear in the record, reveal that a bona fide legal controversy as to the propriety of the oath existed at trial, and was determined against Petitioner. The Arkansas Supreme Court relied upon the record omission to foreclose Petitioner's Federal claim that he was not tried to a properly sworn jury. Petitioner would urge that Arkansas has convicted Petitioner without procedural due process, in violation of CUSA, Amendments 5, 6, 9, & 14. Petitioner would urge Arkansas be required to

prove that the jury was properly and duly sworn, or concede that it was not for the purposes of this action, in consideration of Petitioner's lack of Assistance of Counsel and in light of Arkansas' failure to preserve that oath in the verbatim record.

SPECIAL CIRCUMSTANCES THOUGHT TO JUSTIFY DISCRETIONARY REVIEW OF QUESTION FIVE

As urged above relative to Question 4, the fifth question deals with procedural protections extended criminal defendants by the CUSA, particularly Amendment 6. The reasoning that a criminal defendant should be made aware of the Nature and Cause of the charge against him is quite compelling, as is the notion requiring an intelligent response to that charge be put by the defendant in open court. Society benefits in that no member

thereof may be tried upon a secret charge, or forced to confess to crimes without knowing the Nature and Cause of the accusation. This is the whole basis of the Accusitorial system of criminal law. Please consider the deposition of Father Andre' Bonnichon, before the Committee on Criminal Law of the International Congress of Jurists (Athens, Greece), found in Andre' Bonnichon, *Law in Communist China* (The Hague, 1956),pp. 24,26-32. There is a perfect example of where denial of proper plea and arraignment ultimately leads to. The Accused has no idea why he is before the court, being told by the jurist:

> **"If you have been arrested, it is not without reason, for the government acts always in the right."**

Under Arkansas' Accusitorial process, plea and arraignment brings the Accused

before the Court, informs him of the Cause and Nature of the charge(s), and gives four options as to how to plead. It appears that the lack of personal jurisdiction, if not waived, amounts to as complete a bar to merits trial of a criminal action as does a plea of former jeopardy. In Arkansas, the time to raise a jurisdictional bar to criminal prosecution is **at the first possible moment, or it is lost.** Petitioner urges this Court to examine the question of whether or not Due Process requires a State to first determine a proper plea to jurisdiction, made by an unassisted layman in propria persona, before requiring that further plea to the factual issues.

TRIAL UPON A SPECIFICALLY CONTESTED AND UNPROVEN JURISDICTION IS VIOLATIVE OF DUE PROCESS

It is said Due Process is Law in It's regular course of administration through Courts of Justice. Please see *Leeper v. Texas*, 139 U.S. 462, 35 L.Ed 225. Due Process has been held to mean, primarily, procedure according to the law of the land. Please see *Ong Chang Wing v. U.S.*, 31 Sup.Ct. 15, 16, 218 U.S. 272. The notion of trial according to the law of the land means trial according to such principles in the administration of the law as existed under the English common law, at the time of ratification of the CUSA. Please see *State ex rel Mackintosh v. Superior Court for King County*, 88 Pac. 207, 209, 45 Wash. 248. In the case of a criminal trial, involving jail time, the minimal process due ought to include, when timely and specific challenge has been made, proof

of personal jurisdiction on the record. Petitioner appeared specially, at a proceeding designated as "arraignment", made timely, specific objections to the Trial Court's jurisdiction. Appendix B13-17. The objection, taking the form of a special demurrer or plea to jurisdiction, was **ignored**, and the Court irregularly entered a plea of "not guilty" for Petitioner, as if he had refused to plead. This was not the case whatsoever, as is abundantly clear from the record. Historically, the Accused had substantially the same options as Arkansas' law provides, the pleas of Guilty, Not Guilty, Nolo Contendre [codified in Arkansas in the recent past], and the Demurrer. Arkansas Code Annotated §16-85-707 reads in pertinent part:

> "(a) The only pleading on the part of the defendant is a demurrer or a plea.
> (b) The demurrer and plea must be put in open court and may be oral, but entry thereof must be made on the record.
> (c) The entry on the record of the demurrer and pleas may be substantially in the following forms:
>
> (1) A demurrer: "The defendant demurs...";
> (2) A plea of guilty:...;
> (3) A plea of nolo contendere:...;
> (4) A plea of not guilty:...;
> (5) A plea of former acquittal or conviction:...;
>
> (d) Neither a joinder in demurrer nor a reply to the plea of former acquittal or conviction shall be necessary; but the demurrer shall be heard and decided, and the plea shall be considered as controverted by denial and by any matter of avoidance that may be shown in evidence."(emphasis added)

The above speaks generally to felony indictments, but where an Accused raises a demurrer or plea to the jurisdiction of a Court personally, timely, and specifically, the issue of jurisdiction ought be determined in *limne*. As in cases involving civil

immunity, if the court has no jurisdiction, the Accused ought not be required to undergo the rigors of a trial he is absolutely not liable to. Fundamental legal controversies involving jurisdiction, rather than being brushed aside *sua sponte* by the entry of a "plea" "on behalf" of a criminal defendant, ought to be heard and determined from the onset, as the facts and law may require. Appendix B 14-17 1, pages 6 through 10 show two occasions where Petitioner requested Assistance of Counsel and clarification of the Cause and Nature of the charges he faced, and reserved all his rights without prejudice. **Under Arkansas law, a criminal trial without a <u>proper</u> plea being first entered is error sufficient to arrest judgment!** Please see *Lacefield vs The State*, 34 Ark. 275;

State v. Dillingham, 43 Ark. 154; *Perry vs The State*, 37 Ark. 54. Petitioner was tried and convicted without having been afforded Due Process of Law, contrary to CUSA, amendments 5, 6, 9, and 14. Such conduct is highly capable of repetition, yet evasive of timely and meaningful Federal review. The deprivation was due to the Trial Court's:

> (a) refusing to make a legal determination of his special demurrer and plea to that Court's jurisdiction over his person, and; (b) going on to hold a criminal trial(by unlawfully entering a plea of "not guilty" *sua sponte* and without cause or lawful authority) where in fact the properly entered plea of Petitioner was yet pending.

CONCLUSION

For the above arguments, Petitioner respectfully petitions this Court to award a writ of certiorari, directed to the Arkansas Supreme Court, to the ends that the questions raised herein might be considered and determined.

Most respectfully submitted this ____ *day of* _____, *1994.*

By: _____
Theodore Jones, Petitioner

Number: _____

IN THE SUPREME COURT OF THE
UNITED STATES
TERM IN PROGRESS JANUARY 1994

THEODORE JONES, PETITIONER
vs.
STATE OF ARKANSAS, RESPONDENT
- and -
THE HONORABLE CHRIS PIAZZA
NOMINAL RESPONDENT

APPENDICES TO THE PETITION FOR THE WRIT
OF *CERTIORARI*
TO THE ARKANSAS STATE SUPREME COURT

APPENDICES

"A"

THROUGH

"P"

Submitted by:
Theodore Jones
(*in prorpia persona*)
c/o 1010 Gamble Road
Little Rock, Arkansas USA

APPENDIX A
OPINION OF ARKANSAS' STATE SUPREME COURT

OPINION AFFIRMING CONVICTION

THEODORE JONES V. STATE

CR_93-482

314 Ark. 383

862 SW2d 273

October 11, 1993

OPINION OF ARKANSAS SUPREME COURT

Case CR93-482, Delivered
October 11, 1993

THEODORE JONES V. STATE

David Newburn, Associate Justice

Theodore Jones, the appellant, was convicted of carrying a weapon, driving without a driver's license, operating a vehicle without a license plate, failure to obtain a vehicle inspection sticker, and failure to provide proof of insurance. Mr Jones was tried, and found guilty of all charges, in a municipal court. He appealed and was again convicted in a de novo trial in Pulaski Circuit Court. He was fined and sentence to six months in jail. Mr. Jones raises several points for appeal, none of which have merit, and we affirm the convictions.

1. Representation

Mr Jones argues the Trial Court erred in failing to appoint counsel of his choice to represent him. At each of Mr. Jone's trials, the judge persistently urged Mr. Jones to allow the court to appoint an attorney to represent him. Mr. Jones adamantly refused to be represented by a licensed attorney, insisting that

-1-
[page break]

the court appoint a "trusted person" of his choice. This request was repeatedly denied. The Sixth Amendment of the United States Constitution, and Art. 2 §10, of the Constitution of Arkansas, clearly state that a defendant is entitled to counsel. Equally, clear is Art. 7 §4, of the Constitution of Arkansas, which empowers this Court to

regulate the practice of law in this State. Both this Court and the United States Supreme Court have held that it is not inconsistent with a defendant's right to counsel to limit such appointments to licensed attorneys. See *Wheat v State*, 486 U.S. 153 (1988); *Nichols v. State*, 273 Ark. 466, 620 SW2d 942 (1981).

2. Lack of proper charging instrument

Mr. Jones further argues the Trial Court failed to present the original citation issued to him. The Trial Court proceeded with a photocopy of the citation, which was identified by the issuing police officer. Mr Jones testified he was given a copy of the citation by the issuing police officer. Mr. Jones also introduced the copy he received from the officer into evidence. He

has failed to show how he was prejudiced by the manner in which the Trial Court proceeded. We do not reverse on a point such as this one absent a showing of prejudicial error. *Hooper v. State*, 311 Ark. 154, 842 SW2d 850 (1992); *Prater v. State*, 307 Ark. 180, 820 SW2d 429 (1991).

3. Uniform Commercial Code

[page break]

Mr Jones also takes issue with the oath the jury was sworn to, but his abstract fails to demonstrate the oath that was administered. The administration of the oath is absent from the record as well. In his reply brief, Mr. Jones states that he did not abstract the oath because the court reporter failed to record it. We have clearly stated the rules for a proper abstract in Ark.

Sup.Ct. R. 4-2(a)(6). That a pertinent point on appeal has been omitted from the record is an unacceptable excuse for a failure to properly abstract. It is an appellant's responsibility to produce a sufficient record of all issues to be appealed. *Odum v State*, 311 Ark. 576, 845 SW2d 524 (1993); *Sullinger v. State*, 310 Ark. 690, 840 SW2d 797 (1992).

5. Jury Instructions

[page break]

Mr. Jones also contends that the jury should have been instructed that it was the judge of both law and fact. In essence, he is arguing for jury nullification, i.e., the jury should have been allowed to disregard the law if it chose. This contention has no merit. Arkansas Code Ann. §16-89-107 (1987)

states that during a trial all questions of law are decided by the court and the jury is bound by the Court's decision.

6. Carrying a weapon.

Mr. Jones finally contends his conviction for carrying a weapon, in violation of §5-73-120, violates his Second Amendment right to keep and bear arms. When he was stopped in his vehicle he was found to have a pistol in his pocket. Section 5-73-120 regulates the possession of a handgun in a vehicle, providing in pertinent part:

> A person commits the offense of carrying a weapon if he possesses a handgun, knife, or club on or about his person, in a vehicle occupied by him, or otherwise readily available for use with a purpose to employ it as a weapon against a person.

The Statute provides several exceptions to the general rule stated, but Mr. Jones does not contend he comes within any of

them. Rather, he rails against any restriction upon the bearing of arms. Long ago we made it clear the State may, as a matter of

[page break]

it's police power, place appropriate restrictions on one's right to bear arms. See *Haile v. State*, 38 Ark. 564 (1882); *Wilson v. State*, 33 Ark. 557 (1878); *Fife v. State*, 455 (1876); *Carroll v. State*, 28 Ark. 99 (1872). Affirmed

APPENDIX B

PETITIONER'S

APPELLATE ABSTRACT AND STATE APPELLATE

MERITS BRIEF BEFORE

THE ARKANSAS STATE SUPREME COURT

IN THE SUPREME COURT OF ARKANSAS

AN APPEAL IN THE NATURE OF A WRIT OF

ERROR FROM

PULASKI COUNTY CIRCUIT COURT, HONORABLE

CHRIS PIAZZA, PRESIDING JUDGE
ABSTRACT AND BRIEF OF APPELLANT

SUBMITTED BY:
THEODORE JONES, IN PROPRIA PERSONA
c/o 1010 GAMBLE ROAD
LITTLE ROCK, ARKANSAS U.S.A.

*** INDEX OMITTED ***

JURISDICTION

This appeal is taken to the Arkansas Supreme Court pursuant to Rule 29(c) of that Court, and is contemplated as being brought and sued out in the nature of a common law writ of error. It is appealable within the purview of that Rule in that it involves State and Federal Constitutional interpretation, along with interpretation of certain statutes of the United States, as defined in 28 U.S.C.§1332(d), of the Uniform Commercial Code, as enacted by the State

of Arkansas, and in It's role as a body of New Age Federal Common Law. The record was tendered to the Clerk of this Court on March 3, 1993, and the Appellant's Abstract and Brief is said, by the Clerk, to be due by May 2, 1993.

STATEMENT OF THE CASE

On September 16, 1991, Appellant Theodore Jones received Uniform Traffic Ticket and Complaint number 459722, issued by municipal police officer Nathan Tackett, employed by the city of Little Rock, Arkansas. The charges alleged on the ticket were "carrying a weapon 5-73-120; no Driver's License 27-16-602; no state license 27-14-304; no inspection sticker 27-30-109; no proof of insurance 27-22-104.

On October 10, 1991 Appellant was adjudged guilty on all charges by the Little Rock Municipal Court. The conviction was appealed de novo to the Pulaski County Circuit Court, and there

on trial of that case anew, Appellant was found guilty October 23, 1992 of all charges. Appellant was sentenced to six (6) months in jail, and fined approximately $3250.00.

Thus comes on now this appeal, contemplated and intended as being brought and sued out in the nature of a common law writ of error, to the Supreme Court of Arkansas.

POINTS RELIED UPON ON APPEAL

POINT 1

THE COURT ERRED IN DENYING COUNSEL OF CHOICE AND INSISTING ON REPRESENTATION ONLY BY A LICENSED ATTORNEY

POINT 2

THE COURT ERRED IN PROCEEDING TO TRIAL WITHOUT A VERIFIED COMPLAINT OR ANY OTHER VALID CHARGING INSTRUMENT

POINT 3

THE COURT ERRED IN FINDING THE UNIFORM COMMERCIAL CODE (UCC) NOT APPLICABLE IN THIS CASE

POINT 4

THE COURT ERRED IN SWEARING AND INSTRUCTING JURY, AND IN REFUSING TO ALLOW JURY TO DECIDE LAW AND FACTS AS IT HAD STATED IT WOULD.

POINT 5

THE COURT ERRED IN UPHOLDING CONVICTION OF CARRYING A WEAPON IN VIOLATION OF A.C.A. §5-73-120

ABSTRACT OF PLEA AND ARRAIGNMENT
November 21, 1991

The case was called, and the City appeared by Ms Vickie Fewell, of the Little Rock City Attorney's Office. The Appellant, Theodore Jones, did not enter an appearance proper, but merely came to Court, personally. This is reflected clearly in the Official Reporter's Transcript, Caption and Appearances, R113.

In response to the Court's, "How do you plead...?" (R114:17) Appellant responded that He needed answers to some procedural questions to enable Him to defend Himself. In response to the first

question the Court declared " This is a criminal action." R114:20.

In response to Appellant's second question: "Are you presiding judicially or administratively?" The Court declared: "I'm a judicial officer of the State of Arkansas. And presiding judicially in this case. R115:1. And this is not a criminal action under admiralty law. R114:4-11.

The Court would not answer the question, "Is this Court proceeding at Common Law, or is this Court proceeding in Admiralty law"? Instead the court responded irrelevantly and off point, and demanded Appellant plead guilty or not guilty or, "I'm going to enter a plea of not guilty for you." R116:2.

Appellant, for want of specific knowledge, plead in the nature of a demur, seeking answers needed to understand the nature and cause of the charges alleged against Him, whereupon

the Court entered a plea of not guilty for Him. Appellant reminded the Court of His right under the United States Constitution Amendment Six to the requested answers. Whereupon the Court, again off point, abruptly changed the subject and asked if Appellant had an attorney. R116:9. Appellant asked of the Court, "...But Sir, we must answer the question, 'Am I even chargeable...?'... who is the injured party that has sworn the complaint in this case, Sir?" R117:22. The Court replied that the City of Little Rock "...is according to the State law a blood and bones individual..." (R118:1) The City has been bleeding all over the county the last couple weeks since they didn't pass that millage."

The Court then declared:" So you are charged with carrying a weapon, no driver license, no state license, no inspection

sticker, no proof of insurance..." R119:5.

At this time Appellant sought to introduce for a legal determination this controversy at law.

Jones: "Is this Court prepared to reconcile a controversy?"

The Court: "That is what the jury is going to do." R118:15.

Appellant started to ask another question, and the Court interposed:

The Court: "This Court is not taking a test."

Appellant started another question about the Sixth Amendment of the U.S. Constitution and again the Court interposed with:

The Court: "I've heard enough of this. R119:10-16, and "...we will address whatever issues you feel we need to address on pretrial date of February 6, of '92."

Appellant moved the record to reflect that the Court refused to answer the questions that Appellant needed in order to properly defend Himself.

The Court then responded to Appellant's question:

The Court: "Sure. What questions are those? dealing with the charges, what you are charged with?" R120:17

The following colloquy ensued:

Mr. Jones: I don't understand these charges.

The Court: You have a copy of the ticket, do you not?

Mr. Jones: But the ticket is illegal, totally illegal.

The Court: I'm not worried about whether it is illegal. Do you have a copy of the ticket? Have you been through municipal court on these charges?

Appellant stated that Appellant did not have a copy of the ticket Appellant signed.

ABSTRACT OF OMNIBUS HEARING
February 6, 1992

Note: The official Reporter's Transcript shows a "Pro Se" appearance by Appellant, Theodore Jones, on the Caption and Appearances page, R123; however, this is in direct conflict with the verbatim record of the status asserted by Appellant at plea and arraignment, that of one appearing *in propria persona*, found at R117:1-8, and R128:13-17.

The Hearing was called, and the Court asked for any motions. The following colloquy ensued:

Defendant: Before we go into the motions, I explicitly reserve my rights without prejudice from hereon and hereafter of any written or oral presentation of any type for this hearing under UCC, the Uniform Commercial Code, 1-207. and specifically and explicitly reserve the right to revert out of the Uniform Commercial Code law bad to the Common Law for proceedings in this case.

The Court: "...I don't really know how UCC applies in this court." R124:24.

Defendant: It is found in the Arkansas Code at 85-1-101 and 4-1-101.

The Court: Tell Melissa to get a copy of Title 4-101.(This book was never produced or examines at bar.)

Defendant: I understand there is possible jail time. R126:22.

The Court: "...I want you to know that you have a right-- ... to an attorney, ..." "...I recommend that you have an attorney to represent you." R127:14.

Defendant: I have filed ... a motion for assistance of counsel of my choice that is not a licensed attorney.

The Court: Well, I'm not going to grant that.... R127:20.

The Court: I understand that you wish to defend yourself, but...the Arkansas Supreme Court and the United States Constitution affords a person in your

position the right to an attorney....R128:18.

Defendant: Yes, Sir. The Constitutions of both Arkansas and the United States give me the -- guarantees my right to counsel of my choice, not the Court's choice. R129:5.

Defendant: That's right, Sir. I will not tolerate a licensed attorney.

The Court: "And I will not tolerate someone not licensed to practice law, to be an attorney in this court....

Defendant: Let the record reflect that I object, ongoing.

The Court: Yes, sir. I just want to make sure we put that down for my brethren up on the Supreme Court in case that jury comes back and gives you a year in jail. R129:25.

The Court: We are going to give you a trial in this case,...

The Court: "...I just want to make sure that you know what your rights are going into this trial." R131:6.

The Court: And that I am comfortable that you are waiving those rights, and that you are ready to proceed, to defend yourself, as you say.

Defendant: I waive no rights, Sir, I am still demanding my right. The Court is denying me that right, Sir. R131:10.

Whereupon the Court moved on to the motion of the City to enhance penalties:

Defendant: ...I claim to be one of those that is explicitly exempt. That term is not defined in the Arkansas Statute. R134:8.

Ms. Fewell: ...Are you claiming you don't have to have a driver's license?

The Court: "....and I have heard it before, I believe, it is Common Law that he has the right to be a traveler. R134:15.

Defendant: Yes Sir, You have expressed it. But did you satisfy yourself that the UCC does control this court? R134:19

The Court: I don't know what you are talking about, about the UCC controlling this Court. I can't find the statute that you are talking about. R135:18.

The Court: ...I have forgotten all of that UCC law, I have to admit, And the farther away you can get from it, the better off you are. 138:14.

The Court: Okay. Mr. Jones, are you sure you wouldn't want me to have an attorney to help you in this?

Defendant: ...But I will not let a licensed attorney represent me I must defend myself. R139:17.

Defendant: there is one other motion on the gun issue...if this case should revert to Constitutional common law. That is our heritage from the English Common Law --

The Court: Well, back when they passed the statutes in 1985, they did away with, criminal common law in the State of Arkansas, and everything criminally is by statutory construction by the Legislature. R141:15.

The Court: ... Criminal Common Law is non-applicable in Arkansas as of January 1st 1975. R142:2.

The Court: I am going to deny your motion, because I think that issue is well settled, and that the Arkansas Law on the carrying of weapons is--

Defendant: I expected that, Sir.

The Court: I will show your objections for the record, sir. Is there anything else we need to take up? R144:7-10.

ABSTRACT OF COURT TRIAL PROCEEDINGS
October 23, 1993

It should be noted that, once again, the City appeared by the Deputy Prosecuting Attorneys Judy Kay Mason and Ms Vickie Fewell. The Appellant, Theodore Jones, in keeping with his prior stand regarding a pending demur, did not "appear" in the legal sense of the

word, but rather is listed as being "present" in his own person. Caption page to Trial Transcript, R147

After preliminaries, the following colloquy ensued:

Ms. Fewell: ...we are going to ask for enhancement on tickets he received September 16, 1991. R148:12.

Appellant suggested the prosecution designate the cases relied on for enhancement.

Ms. Fewell: It is the judgment on the 7th of April of this year. Mr. Jones was convicted of three different tickets. R148:13.

The Court: We will take up that if the jury convict him,...

on November the 21st of 1991, Appellant entered a plea of not guilty for you. We discussed your right to counsel....I offered to appoint a public defender, and you declined. You've declined to have counsel here, and you want to proceed and represent yourself. I want the record to

reflect that you've already represented yourself here in this court in a non jury trial. If I recall,...R149:21.

The Court: And that at the conclusion of the last trial when you were given time to serve in the Pulaski County jail, then you pulled out Argotsinger vs. United States (sic) (correction--Argersinger v Hamlin 407 US 25 1972) saying that it was unconstitutional to try you with a possible time in jail without being represented. I felt that was kind of a gut punch on your part. I want to make the exactly clear before we begin this trial that we understand each other, that you do have the right to an attorney, and you've waived that right to have an attorney. I want the record to reflect that.

Jones: I also want to make it perfectly clear, at no time have I ever acquiesced to having any body represent me. I defend myself. Secondly: I always have

maintained for assistance of counsel, not representation by counsel. I want assistance of counsel that's not a licensed attorney. R150:12.

The Court: and that's your request, that you want some one to help you who is not a licensed attorney.

Jones: I have been denied that assistance counsel.

The Court: I want the record to reflect that I've given you opportunity to have a licensed attorney assist you and you've declined. And you know the penalties include time in jail. So I want to make sure you don't pull Argotsinger (sic) on me.

Jones: I am going to do that.

The Court: I want this record to reflect when it goes out to the fellows out on the hill that they will know exactly what this proceeding is and what we discussed before we started.R151:18.

Jones: I want the record to reflect that I am denied --I believe that's the Court's position -- that I am denied counsel of my choice. R151:22.

The Court: That's not the Court's position. You are denied a non-licensed attorney assisting you behind the rail in a trial. If you wont to proceed pro se, that's your problem.

Jones: I want the record to reflect that I consider myself to have been denied counsel of my choice in keeping with the wording of the Constitution of the State of Arkansas. R152:4.

The Court: Are we ready to try this case?

Ms. Fewell: Yes Sir.

Ms. Mason: Yes Sir.

Jones: No Sir, I don't understand the proceedings of this Court. There were unresolved questions at arraignment that have never been approached. For instance, I asked the question at that time is this Court proceeding under the constitution

or common law.. That question was never addressed. I also asked are you proceeding judicially or administratively. That question was never addressed. As for __ and I asked for again here, a sworn complaint or indictment or information. Is there one available on this charge? Is there any sworn complaint or indictment or information? If it's not there, this case ought to be dismissed. R152:9

Ms. Fewell; He is brought by citation, ticket.

The Court: I'm going to let him read all that in the record. Then we are going to call the jury in.

Ms Fewell: You looked at me. I thought maybe you wanted a response.

The Court: No, no.

Jones: is this Court proceeding under some form of equity or the Uniform Commercial Code? That question was never addressed. And because of these

unanswered questions that I have a perfect right under the Sixth Amendment of the Constitution to have answered, them not being answered, again, I did not plea. What I did was demur, which I think is proper. R153:7

THE ROLL WAS CALLED AND OTHER PROCEEDINGS ENSUED.

The Court: ... What we are going to do is in a misdemeanor trial is similar to selecting a jury in a civil trial...R156:8.

At voir dire Appellant asked in substance whether, if two conflicting laws were brought to the jury's attention, was there anyone there who could not examine both and give fair attention to both of them. Appellant declared "If there isn't I ask that the whole panel be dismissed." R160:20.
The Court: That's not the proper question. The question that will be given to you at the end of this trial will be

is can you take the evidence that's been shown and the law that's been given as written by the Arkansas legislature, and whether they will follow the law or not is the question, not whether they believe or disbelieve the law, Mr. Jones.

Jones: I want to object to that, sir. R161:7

Jones: In that you have an absolute right to try both the law and the facts in this case, the law and the facts, regardless of what the Court might tell you.

The Court: Mr. Jones, they do not have the option of deciding the law. Neither does the Court. That is established by the Arkansas State legislature, by majority vote, and that is the law of this State. R161:8-17.

Appellant then read an excerpt from Hudson vs State of Arkansas 7 Arkansas 59:

> **"Here there was an issue regularly formed which involved questions of law as well as fact and upon which**

the jury were required to pass. In all criminal prosecutions under our constitution and laws the jury are the judges of both the law and the evidence, and as a necessity"-- R161:18

The Court: ...That is a correct statement of the law, sir. That is absolutely correct. The jury decides based on the law that I give them and the facts that are introduced into evidence, and they make that decision, and I instruct them on that. But you cannot voir dire the jury on whether they will take a particular law and believe or disbelieve that law. I will give the law. R162:1

Appellant called the to the attention of the Court that that is not the only case from the Arkansas Supreme Court on that point. R162:17

The Court: I know. Let's just move on, please sir. R162:19.

Appellant then asked in substance: "How many of you feel that you are obligated to obey a state statute law

rather than God's law? How many of you feel that your first responsibility is to obey the state statute?" R163:1-3.

The Court: Mr Jones, the jury doesn't have that option. ... They are bound by the law. They apply the law to the evidence in the case. That's not a proper question. R163:4

Jones: I object. God's law has been in force for thousands of years. The driver license statute has come into being in my lifetime.

END OF VOIR DIRE

(Thereupon the jury was sworn to try the case, but the oath does not appear in the transcript.) R163:25

Jones: I object to the swearing of the jury, in that it has not been properly sworn. I rely on SANFORD V STATE OF ARKANSAS, 11 Ark 328. I would like to read that case to you.

The Court: Go ahead.

Jones: "It is not sufficient in a criminal prosecution to swear the jury well and truly to try the issue joined and a true verdict render according to the evidence. The jurors in such cases are the judges as well of the law as the facts and consequently should be sworn to try the case according to both, or at least it shall appear that they were regularly or duly sworn, Yet, as the swearing of the jury was clearly defective, the judgment of the circuit court must be reversed".

Jones: so they have not been sworn to try both the law and the facts. They have not been properly sworn, Sir. R164:10.

The Court: Your objection will be overruled.

OPENING STATEMENTS

The prosecution opener was routine for conviction.

The defence proceeded thusly: ...I claim all my rights. I am even a belligerent

claimant of those rights based upon U.S. V JOHNSON 76 F2 538:

> **"The benefits of your rights can be maintained only by your sustained combat. It cannot be claimed by an attorney or a solicitor. It is valid only when insisted upon by a belligerent claimant in person." R168:13**

If I tell you something about this reasonable doubt that causes you, in your own mind to think, well maybe that old man is right, now folks, there is a reasonable doubt. R169:15.

The Court: That is not a correct statement of law. The jury will be instructed at the end of the trial as to what the definition of reasonable doubt is....

Jones continuing: I'm going to cite to you at least ten different court cases that will show you that I have defense of my own right. It will be up to you to decide that controversy of law, whether they or I am correct. R170:6.

The Court: I disagree, Mr. Jones. This jury will not decide an issue of law. The state legislature has defined these terms.

Jones: I maintain in this case the jury is well within their rights and it is their responsibility, regardless of what the Court's instructions are, to find in keeping with their own conscience, that right is absolute. It is unquestionable, unreviewable, that right, to disregard the Court's instructions. R170:20.

The Court: That's absolutely not true. You cannot argue that in this court. I know your position on that, and that is not true. Our United states Supreme Court and the Arkansas Supreme Court have decided that issue, and it is not within the province of the jury to disregard a law which they don't like. They apply the law to the facts and in their conscience make that decision, so let's move on. R171:1.

The Court: the City may call its first witness.

TESTIMONY OF NATHAN TACKET
DIRECT EXAMINATION:

I am Nathan Tacket, patrolman, City of Little Rock Police Department. On September 16, 1991 I issued citation number 459722 to Theodore Jones. I stopped him and his green Pontiac in 12200 block of Kanis Road and made contact with Mr. Jones. R172:

Mr. Jones told me he had no driver license and was Traveling as a matter of right, not driving, and was not required to have a driver license. He had no state license plate, nor inspection sticker, nor proof of insurance. R173:20.

Officer Miller pulled up to the location and informed me that Mr. Jones was known to carry a hand gun. I searched him . He had a 22 caliber revolver in his pocket. at that time I placed him under arrest and confiscated the weapon. I

charged him with carrying a weapon and traffic violations. I then transported him to the Little Rock detention where he was booked for carrying a weapon, no driver license, no state license plate, and no proof of insurance. R174:8 through R175:14

CROSS:

The Witness: When I joined the Little Rock Police Department I swore to uphold the United States and Arkansas Constitutions. R177:2.

At the question: "Are you employed in the executive branch of the Little Rock city government?" The prosecutor objected to the question as irrelevant and the Court sustained saying that it is irrelevant.(R177:10)

Jones said it certainly was relevant because, with that, he intended to show that the witness had violated his oath. R177.13-16.

The prosecutor stipulated that the witness was employed in the executive branch government but that she did not know whether or not he was not in the judicial department of government. She objected to the question and the court upheld her objection as not relevant. R178:1-24.

Jones declared that it certainly was relevant which of the three branches of the government the witness was employed in, and asked the record reflect that the Court's position is that it is irrelevant whether the witness was the judicial branch of government or not.

The Court: Yes, sir. R179:1

The Witness: Mr. Jones asked me to, and I did identify the copy of the ticket I had issued to him. It was titled "Uniform Traffic Ticker and Complaint" and was one of four or five copies. Mr. Jones asked to see the original of the copies. (R179.23)

The Court did not have the original of the ticket, nor did he know that it was returned to the court. R180:1

The Court stated, "I don't Know. You can look through the file, see if you can find it." R180:2-8

Ultimately, there was no ticket found and Mr. Jones took the following position:

Jones: "If there's no complaint, what are we doing here?"

Jones asserted that there was no charging instrument and the case should be "dismissed right now,".R180:19

The Court's opinion was: "that is not a necessary document to have the original, that you were informed of the nature of the charges and have a copy of the charge this officer made against you."

Mr. Jones' replied that the copy he had was not an exact copy of the original. R181:6

Ms. Fewell objected alleging that Mr. Jones was arguing instead of asking questions. She mentioned GULLETT V STATE but when the Court asked her to read the cite. She said,"10 Arkansas Appeal 97 ... I don't have the Southwest cite on it." R181:16-R182:1

In response to an objection by Mr Jones, regarding the nature of the trial, Jones arguing prejudice because the Court failed to tell him whether the trial was a criminal prosecution according to the course of the common law.

The Court: Mr. Jones, in 1975 the Arkansas legislature enacted a new criminal code wherein they said that there are no criminal common law crimes existing in Arkansas from that period forward so we are going on statutory law. So let's proceed, please. R182:7

Answering questions Jones put to the witness, the witness was asked to read

the ticket's number, in the upper right corner:

Witness: 459722

Then the witness read the word directly under the number:

Witness: Summons.

The witness was then asked to read the two lines following:

Witness: "In the municipal court of Little Rock, you are hereby summoned to appear before this court to answer for the following offenses. The witness was asked in clarification whether the ticket was, therefore, a summons:

Witness: I not sure I understand your questions, sir.

Jones asked if he had not just read the word summons off the ticket, and further identified it as such.

The Witness: I wouldn't take that interpretation of it, no, sir.

The Court objected, finding the witness' interpretation relevant because he was not a lawyer. R182:21-R183:20

The point under discussion was summons and the witnesses ability to interpret the word as it appeared on a traffic ticket. Ms. Fewell injected: "Your Honor, excuse me, this issue has already been decided against Mr. Jones in one of his prior cases by the Arkansas Court of Appeals, Jones v City of Newport, 29 Ark 842, 78 Southwest Reporter 339. Specific proof was demanded by Jones.

Ms. Fewell commented: "You argued because it said summons rather than citation it was defective. The Court said that was not a correct construction." R183:21-R184:18

Mr. Jones again challenged the authority of the court to proceed without a charging instrument. R184:24.

The Court replied: "Mr. Jones I'm going to give this to the clerk. This the appeal transcript that was certified from below on that issue. It contains the copy of the Uniform Traffic Ticket along with an appeal transcript. I want the record to be-- to show the defendant was aware of the nature of the charges. Would you mark that as a Court's exhibit 1." The exhibit was so marked. R184:24-R185:9

The witness was asked if the charges on the ticket were the charges he had alleged against Jones.

The Witness: Yes, they are.

The witness was asked to read the charges for the jury:

The Witness: "carrying a weapon, no driver's license, no state license, no inspection sticker, and no proof of insurance." R185:23-25.

The witness was asked if he signed he ticket:

The Witness: Yes, I did. R186:3

The witness was asked if any court signed the ticket:

The Witness "There is some additional what appears to be statute numbers written in pencil on the ticket. I have no idea who wrote those on there."

The witness was asked again if any judge or clerk of any court had signed the ticket:

The Witness: No, sir.

The witness was asked if there was any Official seal of any court on the ticket:

The Witness: No, sir, thee isn't. R186:12

Jones then tried to press the point that the "summons" was not signed by a judicial officer, and Ms Fewell objected to any questions directed o the officer concerning his interpretation or construction of the law. The Court agreed, and instructed Jones to wait until the court took a break to make his record.

The witness was then asked if he issued the ticket on his own, without assistance or direction from any court. The witness: I was authorized by the policies and procedures, rules and regulations, of the Little Rock Police to enforce and uphold the Constitution of the United States, the state laws of Arkansas, and the city ordinances. Acting upon those I had probable cause that those violations had been committed, and you were issued that citation. R187:6-11.

The witness was asked if he had checked the registration on he car. The Witness: "I ran a registration check on the VIN, which is the vehicle identification number, on your vehicle. I also ran a driver's license check on you, yes." R189:15

The Witness was asked if the car was registered or not.

The Witness: To my knowledge the vehicle was not registered or licensed rough the Department of Motor Vehicles.

The witness was excused. The State rested, and a motion to dismiss was made, because the prosecution failed to build a prima facia case. The Court denied the Motion. R190:18

DEFENSE

Testimony of Mr. ED GRAN on DIRECT EXAMINATION:

Witness: My name is Ed Gran. I live at 12426 Colonel Glen Road. I teach school at UALR. I am aware of two occasions when Mr. Jones fired a weapon at dogs. The first was back in 1989. A dog that usually tied got loose and attacked Mr Jones he fired at the dog. I talked with the owner and established the attack. The second instant involved a pit bull. Mr. Jones was tried and found not guilty. I assisted in that trial. R193:15-R194:13

The Witness was passed for CROSS-EXAMINATION:

The Witness: I did not see either incident. The dog owner admitted their dog was loose, but was usually tied. Mr Jones was walking as he has done for years. He was not in a car or truck. R196:8

The Witness was returned for REDIRECT:

The Witness: Each time Mr. Jones visits my home I take care to keep my dog under control so that will be no problem.

Direct Testimony of Theodore Jones:

The Witness: Ladies and Gentlemen, I wish to have counsel of my choice so my counsel could ask me questions and make it easy for me, but I have been denied counsel of my choice. However, I notice the prosecution has two lawyers. I'm not a lawyer. R197:23-R198:2.

The Court noted that It had offered to appoint a licensed attorney to represent Appellant. The Witness/Defendant contended he did not

want a licensed attorney, but wanted counsel of His choice as laid out in article 2, Section 17 of the Arkansas Constitution.

Testimony of Jones, continued:

The Witness: I testify as a matter of fact that I have learned that the Uniform Traffic Ticket and Complaint issued to me has the attributes of a colorable , quasi-contract, in commerce, and is under the umbrella of the Uniform Commercial Code. R199:4. Ms. Mason objected. R199.7.

The Court: That's not a fact in dispute. The fact in dispute is what occurred on the night of September 16,1991....The Uniform Commercial Code ...is not applicable in this case in any form or fashion. This is a criminal violation..your objection will be noted. R199:20

The Witness: I testify as a matter of fact that the reading of Blacks Law

Dictionary, 6th Edition, at page 1530, the first word,"uniform" in the ticket name means, conforming to one rule, equitable, a statute is general and uniform in its operation. I also have learned that Blacks 6th at page 1495 defines "traffic-"R199:21-R200:3.

Ms. Mason: Interposing. Your Honor. if I might, I don't want to continue interrupting.

The Court: Mr. Jones, this is a legal argument. You cannot make a legal argument to this jury.

The Witness: I have the right, as a belligerent claimant, to testify as to what I have learned. R200:11.

The Court: ...what you have learned ... is not relevant to the jury....

The Witness/Defendant: Your Honor, I am setting the groundwork to show this ticket to be a commercial paper. R199:21-R201:4

The Witness: I testify that I do not d-r-i-v-e I an not privileged via a license. I t-r-a-v-e-l as a matter of right. T.R201:4-R202:2

The Witness: Repeatedly I have been attacked by dogs. I understand that at any time I am subject to attack. It is for the purpose of protecting from such attacks that I often carry a weapon. It is not for the purpose of use against a person. R202:2-R204:2

The Witness: Insofar as I know there's been no evidence that the car involved herein was registered.

Jones then tried to introduce evidence regarding the complex language used in the statutes under which the State alleged he was charge, to the effect that they required a far higher level of education [up to 30 years of education] to comprehend than he was possessed of.

The Witness: I want the jury to understand that for instance, no state tags, that statute that I'm charged under, is written so that a person would have to have 30 years of education to understand that statute according to this well recognized Right Writer. R204:20.

Ms. Mason objected.

The Court: Let him continue a little bit on this. Go ahead.

The Witness: See, word for word, phrase by phrase, paragraph by paragraph, these statutes I've been charged under have been put through this program under this Right Writer to see at what level of education that a person would have to have to understand. We equate that word with read, o read successfully, that statute, And when I come to read these statutes to you in my defense, you will see what I'm talking about. I just wanted to make a record on it that this is

available for all of us. That's all the testimony I have, sir. R204:3-R205:11

CROSS-EXAMINATION OF MR. JONES

The Witness: On the day of the ticket was issued I was traveling as a matter of right. I did not have an Arkansas driver's license, neither did I have an Arkansas inspection, Arkansas tags, nor registration all In keeping with my rights, to travel and my right not to be forced into contract. I was convicted of these same charges in, I believe, 1989 and now have other convictions on appeal to the Supreme Court. R205:16 - R207::22

The Witness: I was prosecuted in this court house about 1988, I don't remember exactly, but Mr. Gran, not a licensed attorney, sat at the defence table with me as my assistance of counsel. On the day I was arrested on this weapons charge I had been into a high crime area where dogs were quite common. I did not call

the police and tell them I was going into that high crime area. The people who owned the house I went to look at had moved from that area because of the high crime incidence. R 208:22-R210:9

The Witness: I had my gun because of dogs in the black neighborhood with high crime. It would be most difficult for a 75 year old, with three people on one a car seat to get a weapon out of his pocket. I had not though of the possibility of using the weapon against a policeman, or any one else for that matter. I had the weapon with me at the house. I do not remember seeing a dog or snake, Anybody that has any experience knows that a colored man's dog is more dangerous to a white man than is a white man's dog, vice versa. Any one who knows any thing about dogs knows that. I do not know whether or not that it was a congested area. This was on Valentine street. I do not remember seeing

children. There were people next door on both sides. R210:10-R213:3

The defense rested. The jury was sent out and jury instructions were taken up next, out of hearing of the jury:

The Court: "I'm going to start with the City's instructions. Then we will work on yours ... Some of these (jury instructions) are basic...." R214:2

There continued the acceptance and numbering of eight (8) routine instructions. The Court's comment on the number 8 instruction was:

The Court: "charging instrument, I don't think we really need that." R214:10,11.

Ms. Mason: We should have found that to begin with, probably would have helped.

The Court continued naming and numbering instructions through 14, followed with "closing instruction will be 15." R214:17

There followed minor wording changes. The Court then continued numbering instructions to number 26. R215:14 Then the Defendant's proffered instructions were taken up for consideration:

The Court: Now, I have a set of instructions we need to examine. The first is:

> **"The right of the citizen to travel upon the public highway and to transport his property thereon in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes he right in so doing to use the ordinary and usual conveyances of the day and under the existing modes of travel, includes the right to drive a horse or to operate an automobile for usual and ordinary purposes of life and business."**

Mr. Jones proffers this as an instruction in his case. Mr. Jones this is where I think the crux of your argument is that you have a right to travel. The State alleges that travel

when you are operating a motor vehicle is tempered by the state law which requires you to have a driver's license. I think this instruction contradicts the current state law, and that is, that to operate a motor vehicle in the State of Arkansas you must have a driver's license. This is a comment-- I'm not going to allow this to go to the jury, I'm going to mark it Defendant Jury Instruction Number A... as part of the record. It will be denied over your objection... R215:14-R216:15

(The case cite contained in the instruction was omitted)

The Court:

> **"The right to travel is part of liberty of which a citizen cannot be deprived without due process of law under the Fifth Amendment. This right was emerging as early as the Magna Carta." (Case cite was omitted.)**

The Court: "...the right to travel exist. But that's not the issue. The issue is, can you operate a motor vehicle without a license....that is a proper subject of

police power,...I'm going to mark it Number B." "It includes the right... to operate an automobile..."

The Court: Yes. That will be marked as B, to preserve the record, and rejected.

R216:15-R217:16

The Court: The next one is:

> **"Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."**

That's also a correct statement, except that in case of driver's license, it has been ruled that the State can exercise its police powers by controlling those people who operate a motor vehicle within the confines of its border, so I'm going to mark that as Number C. I'm going to deny it. R217:16

The Court:

> **"The claim and exercise of a constitutional right cannot be converted into a crime."**

I'm going to mark this as D. I'm going to refuse it. The reason is you don't have a

constitutional right according to current state of law to operate a motor vehicle without a driver' license.

Defendant Jones queried the Court:

Defendant: "When has the Constitution Amendment been made that would nullify it, these rights?

Ms. Mason: "Satterlee v State, 289 Ark 450 (1986)...." R218:7

Jones objected, pointing out that the Supreme court of Arkansas "distilled Two" out of 30 "incomprehensible" points upon which they made the Satterlee decision.

Ms. Mason: Your Honor, also Theodore Jones v City of Newport, previously cited too. R218:20-R R219:14

The Court: The next one is:

> **" Where the police power to regulate the use of it must be done subject to and with regard particularly to the U.S. Constitution, it is elementary that a rights secured by or protected by that document cannot be overturned or impaired by state police authority."**

I'll mark that E. It is going to be refused. You may make that part of the record." R218:21.

The Court: The next instruction:

> **"I have learned that the police power of the state must be exercised in subordination to the provisions of the United States Constitution."**
>
> That will be marked as F and refused. R220:3.

The Court: The next one I have here is:

> **"here there was an issue regularly formed which involved questions of law as well as fact and upon which the fury were required to pass. In all criminal prosecutions under our constitution and laws, the jury are the judges of both the law and the evidence."**

I think that is accurately covered by AMCI 101. Therefore I see no reason to modify that Instruction. That will be G. I show it refused. R220:13.

The Court: Then I'm also going to deny the instruction dealing with

> **"It is not sufficient in a criminal prosecution to swear the jury well and truly to try the issue joined. The jurors in such cases are the judges as well of the law as the**

facts and consequently should be sworn to try the case according to both."

I'll mark that refused as H.

T.219:14-R220:25

The Court: I is a statement:

> **"Decency, security, and liberty alike demand that government officials shall be subject to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously, ("which kind or contradicts some of these other requests for instructions" [a Court insert]). "our government is the potent, the omnipresent teacher."(the rest of this quote was not given.[Jones])**

I'm going to show that refused as

Number I. R221:1.

(a recess was taken)

In discussion of prior convictions that are on appeal, for enhancement purposes the Court stated..."in that case (the Judge) had offered to have the public defender assist him and also offered certainly to have him represented or defended by licensed counsel. He

declined and wanted counsel of his choice who was not licensed, Therefore he ended up defending himself. I think he was represented. At least he represented himself in those two prior cases after a waiver." R222:9

There were discussions between the Court and prosecutors relevant to sentence enhancement and habitual criminal sentencing. with the instructions on the bifurcated part being entered as exhibit 1-A. R222:9-R223:24

Exhibits 1-A through 1-L were marked and entered, all being relative to sentencing. The Judge stated he was limiting closing to ten minutes.R224:10

Defendant: Ten minutes! No way, no, sir.

The Court: Well, I may give you a reasonable time. That is what I am going to shoot for....

Ms. Fewell: Your Honor, we don't have a verdict form for no prior offenses, if

they find him just guilty on the enhanced. R225:6

The following instructions were given to the Jury:

INSTRUCTION 1 -- AMCI 101

AMCI 101(a),(b),(c),(d),(e), and (f) were read to the jury;

then AMCI 102; AMCI 103; AMCI 104; AMCI 106; AMCI 107; AMCI 108; AMCI 3152;

INSTRUCTIONS 10,11,12,13,14

AMCI 6003

" 6002

THE FORGOING INSTRUCTIONS WERE READ TO THE JURY: THE VERBATIM READING IS OMITTED FOR BREVITY, WITH RESERVATION OF RIGHT TO INCLUDE IN SUPPLEMENTAL ABSTRACT IF STATE RELIES UPON ANY MATTER CONTAINED THEREIN. R225:9-R232:1

CLOSE Ms. Fewell

Ms. Fewell:... Mr. Jones admitted in his testimony that he did not have the driver's license, license plate , insurance inspection sticker, and

admitted that he was in fact carrying a weapon in his pocket.

The only fact that is disputed will be whether he carried that weapon in order to employ it as a weapon against a person.

Mr. Jones has tried to tell you repeatedly, he seems to think he has the right to decide what the law is and to decide which of our laws he will obey..... ...he has worked to ...get around the law ... not to have any punishment....It's no fun to have to go down and get a driver's license or get a license plate or pay for liability insurance, but you and I have to do it, and Mr. Jones has to do it too,...R232: 3-R233:25.

CLOSE: Mr. Jones

Mr. Jones: ...McMath v State of Arkansas, 55 G.A. 303. "Upon the trial of a criminal case counsel in their argument

may read law to the jury in the hearing of the Court."

I have a number o' such cases upon which my defence is based.

... (only) the alleged copy of the charging instrument (traffic ticket) is produced here in court. R234. The first charge against me we will consider is Ark. Stat. Ann. 27-14-304 it reads in pertinent parts: No person shall operate, nor shall an owner knowingly permit to be operated, upon any highway any vehicle required to be registered under this chapter unless there shall be attached thereto and displayed thereon , when and as required by this chapter a valid license plate issued therefor by the office for the current registration year, except as otherwise expressly permitted in this chapter.

That statute is written at the 30th grade level of educational understanding. Note the three phrases: R235:2-25

1."any vehicle required to be registered under this chapter, 2.when and as required by this chapter, 3.except as otherwise expressly permitted in this chapter." This is Chapter 2 of the Motor Vehicle Code, and Ch.2 nullifies itself as applied to me. There are two other of the charges that the same principal applies to.

The Court: Interposing: Mr. Jones, we are arguing the law and not the facts. You are reading law that has not been given to the jury . I've instructed the jury. R236:19

Defendant: I want to remind you, Sir, upon trial of criminal occasions counsel in their arguments may read law to the jury in the hearing of the Courts.

The Court. Yes, you may. Here, I'll give you these instructions. You may read these instructions and the law to the jury. R236:25

Defendant: Am I to be confined to what

you are telling the court (jury) that the law is?

The Court: Absolutely, That is the way we run trials in the State of Arkansas. The law is given to me by the legislature, and I give it to the jury. R237:5

Defendant: And I want to read to you ...the provisions of Ch.2 in this book. I want this made an exhibit so the jury can take it to the deliberations. R237:16

The Court: What is this Mr. Jones?

Ms. Fewell: I object.

The Court: Arkansas Motor Vehicle Traffic and State Highway Commission Regulations. You can mark it for identification. The evidence is closed. That would not be proper for the jury's province, even if the evidence was still open. You can't introduce that. I will mark it for appellant purposes. R237:24

Defendant; The provisions of this

sections shall not be applicable to a state owned --

Ms. Fewell: Your Honor, he is still reading, I believe, from the traffic code.

Defendant: I have a right to read, I'm a belligerent claimant in that right, Sir.

The Court: You have a belligerent claim to make that right, but not before this jury. You can do it in another forum. This is a forum that's governed by the rules of law, sir. You may argue these Instructions and apply them to the facts as presented today by the testimony and by the exhibits.

Defendant: Now we come to a definition of the word owner," The meaning -- R238:15

Ms. Fewell: Your Honor I object.

The Court: Again, Mr. Jones that is outside of the scope of these instructions.

Defendant: My argument is that the state owns our vehicles, your vehicle and

mine..... Every time a vehicle is brought into the State of Arkansas from the manufacturer, ...and ...is delivered to a new car dealer, with it comes a manufacturer's statement of origin. ...that is the proof of ownership of that vehicle. And the owner is a person that holds the title, proof of ownership = The owner -- R238:5

When an automobile is retailed from the dealer the owner then submits the STATEMENT OF ORIGIN to Motor Vehicle Department with the application for registration, a fee is paid, and the State of Arkansas is now the owner of the vehicle. The State now holds the title. The Department then issues a "Certificate of Title", and the purchaser is the owner of only an equitable interest in the vehicle. R239:18

Now you understand why these statutes are written as they are, so, the

ordinary citizens, won't understand them. R239:21.

Ark. Stat. Ann. 27-22-104 reads: "It shall be unlawful for any person to operate a motor vehicle within this state unless the person is covered by a certificate of self-insurance under the provisions of 27-19-107, or an insurance policy issued by an insurance company or surety company authorized to do business in this state." The first part of that statute does not apply to you and me. we don't have 25 cars. The part that does apply is..."unless the person is covered by an insurance policy issued by an insurance company authorized to do business in this state."An "insurance policy" is a contract. To compel a person into a contract is contrary to Arkansas Constitution Article 2, Section 17 "No law impairing the obligation of contract shall be passed." and it's counter part

in the United States Constitution.

R240:25-R241:22

The Court: Mr. Jones, you made the argument. This jury is instructed that you cannot decide what the law is. ...That is an improper argument. R242:12

Defendant; Carrying a weapon under 5-73-120 is the next issue, it reads: "A person commits the offense of carrying a weapon if he possesses a handgun, knife, or club on or about his person, in a vehicle occupied by him or otherwise readily available for the purpose of employing it as a weapon against a person."

It is not against the law to carry a gun in the State of Arkansas. It is against the statute to carry a weapon for the purpose of using it against a person. The State has put on not one iota of evidence that I was carrying that weapon for that purpose. My testimony was that the weapon was carried against dogs. Mr.

Gran's testimony was that he had to control his dog when I was at his home. R243:13

Repeatedly I have challenged the statute requiring a driver license, it reads:

> **"No person except those expressly exempt shall drive any motor vehicle upon the highway in this state unless that person has a valid license as an operator or a chauffeur under the provisions of this chapter."**

This controversy hinges on the words drive and privilege v. travel and rights.

No one would question our right to breath. No one would challenge our right to ingest our food. Would any one question our right to produce our food or our right to earn our food, or our right to travel to our employment to earn our food. These are rights from our god. They are protected through the Magna Carta and guarantied by our Constitution. Only an uncontrolled government would try to restrict these rights. And then only to

have grow up a money producing tree.

R244:26

The Court: That is an improper argument. I'm not going to allow you to make that argument. The legislature has determined that you must have a driver's license to operate a motor Vehicles. As the Defendant I quoted an offered but, denied jury instruction which read:

"The right of the citizen to travel upon the public highway and to transport his property thereon in the ordinary course of life and business is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right in so doing to use the ordinary and usual conveyances of the day and under the existing modes of travel, includes the right to drive a horse drawn carriage or wagon or to operate an automobile thereon for the usual and ordinary purposes of life and business."

The Court: Mr. Jones, this issue has been decided....

Defendant: I want to again refer the Judge to McMath v State of Arkansas 55 C A--

The Court: McMath v State did not give a closing argument, that a person making a closing argument has the right to change the law as given to the jury.... That is a legal issue that can be determined on appeal or in some other forum, but not to this jury.

Defendant: Listen to this and see --

The Court: We heard all the argument on this issue. Now let us move on....

R245:19-R246:26

I was precluded from arguing legislation and court decisions relative to my rights. The Court responded.

The Court: I am precluding...argument to the jury to argue the law as passed by the Arkansas legislature and enforced through this type of proceeding.

Jones reminded the Court, in a quote from the U.S. Supreme Court that:

> **"Where rights are involved there can be no rule making or legislation that would abrogate them."**

The Court's response was such that Appellant asked if the Court intended to hold Him in contempt for insisting on His rights as a belligerent claimant of those rights. R247:24

A statement of the Court was:

The Court: "I've instructed the jury on the law, the instructions 1 through 26. (R248:9)

To which Appellant replied:

Jones: "...and I submitted these as jury instructions, and you denied them. R248:12

The Court: That' right, because they are inaccurate statements of the current state of the law. That's true.

Then Appellant asked;

Jones: Are you going to cite me for contempt if i don't cease my defense?

The Court: I don't know, Mr. Jones, I've said all I'm going to.(R248;22) I'm prohibiting you from making the argument that this jury has the option to

disregard the state legislature's laws as passed. R249:4

Appellant told the Court that He would continue until the Court threatened to hold me in contempt. His response was: The Court: Okay. Mr. Jones, the next time you mention that, I'll hold you in contempt. R249:19

Having been denied of my defense and threatened with contempt if I continued I brought my defence to a close.

STATE'S REBUTTAL

The State offered rebuttal:
Ms. Fewell: Just one statement, Your Honor. What Mr. Jones is telling you about how confusing he thinks the law is, he has never said that he doesn't understand that he had to have a driver's license plate, and that he is not supposed to carry a weapon in a vehicle. Thank you. R250:15

Further Instructions were delivered to the jurors, whereupon they retired

only to return with a verdict of guilty on all charges.R251:1-25

A discussion ensued pertaining to sentence enhancement proceedings. R252.

Applicable jury instructions were given (pages R253-257)

Ms. Fewell made a close without once mentioning a legal base for a jury finding on enhancement. Her appeal was along the line of, He is a bad guy, you must teach him a lesson. r257:20-r259:5

Appellant's close was intended to show that the "enhancement" was nothing more then an extension enforcing my deprivation of rights. R259:6-R260:12

The jury retired and returned with sentencing recommendations. R262.

Then:

Jones: I have two things I want to bring before the court. The Court. What's that ,please, sir?

Defendant: One is Article 2, Section 9, A portion of that section:

"In all criminal prosecutions the accused shall enjoy the right to a speedy trial and a public trial by an impartial jury and to be heard by himself and his counsel."

Jones: I was denied my counsel. This says his counsel, My counsel has been denied.

The Court: And that's not a licensed attorney, but your consul is not a licensed attorney.

Defendant: I would invoke ARGERSINGER V HAMLIN. R263:12.

The Court: You are going to make me mad again, Mr. Jones. Jones: I have to be a belligerent claimant of my rights, and this is my right, sir:

> **"We hold therefore that a absent a knowing and intelligent waiver no person may be imprisoned for an offense whether classified as petty, misdemeanor, or felony unless he was represented by counsel at his trial. Under these rulings, we announce today that every judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed even though the local law**

permits it unless the accused is represented by counsel."

The Court: Let me for the record state that I think this is one of the sleaziest arguments I have ever heard in my life,...I have employed (sic) Mr. Jones to have a licensed attorney or public defender help defend him, ...he has knowingly and voluntarily waived any licensed attorney, wanting only nonlicensed assistance of counsel. I brought up Argersanger at the beginning of this trial and dared him to bring it up again. He knows exactly where he is and who he is and what he is doing....yet makes this argument on a technicality.... He challenged this jury to give him time saying that his principles and beliefs demanded it.... R262::25-R264:18

Defendant: The Constitution says I have a right to counsel of my choice and to be heard.

The Court: We've made a good record of that....

Defendant: Allocution.

The Court: What argument are you going to make? Defendant: I object to sentencing at this time.... The jury can only rule on the facts issue while the law issues are still in dispute.....You are on notice that... my appeal will be in the nature of a writ of error to the high court. R265:1-20 Sentence was passed totaling approximately $3,000 and 6 months in jail 30 days to appeal with immediate incarceration and $4,000 bond.

Thereon the foregoing proceeding was concluded, and Jones was whisked off to the county jail.

ARGUMENTS

Point 1: THE COURT ERRED IN DENYING COUNSEL OF CHOICE AND INSISTING ON REPRESENTATION ONLY BY A LICENSED ATTORNEY

Colloquy regarding Trial Court's denial

of Assistance of Counsel:

The Court: You know you have a right to an attorney to help in representing. (R127:10)

Appellant: ...The motion I filed ... for Assistance of Counsel of my choice that is not a licensed attorney. R127:16

Court: Well I am not going to grant that. I will grant you a licensed attorney ... (or) public defender. R127:20

The Judge understood Appellant sought Assistance of Counsel.

Appellant: ... I always have maintained for Assistance of Counsel, not Representation by Counsel. I want Assistance of Counsel that is not a licensed attorney. (R151:3)

Court: And that is your request, that you want some one that is not a licensed attorney.

Appellant: That's right. I have been

denied that. R151:8

Court: I want the record to reflect that I have given you opportunity to have a licensed attorney ... and that you have

declined ... so you don't pull *Argersinger* on me.

Appellant: I am going to do that....

R151:16

Court: You are denied a non-licensed attorney assisting you behind the rail in a trial.... (R152:1)

Appellant sought assistance, by some trusted person, to counsel and assist Him, not Representation by licensed attorney.

Appellant: I want the record to reflect that I consider myself to have been denied counsel of my choice in keeping with the wording of the Constitution of the State of Arkansas. R152:5

Article 2 Section 10 of the 1874 Constitution or Arkansas states:

"In all criminal prosecutions the accused shall enjoy the right .... to be heard by himself and his counsel."(emphasis added)

Is not the phrase: "Licensed attorney" a term of art, contemplating a State-franchised Officer of Court, with *privilege* to *appear* for, and *represent* another? Isn't the national Right to enjoy Assistance of Counsel preserved static, unchanged since 1791 (ratification of the Constitution for the

United States of America (CuSA)? Please distinguish "Assistance of" from any "*privilege of, or to Counsel*". Is not a *licensed* Attorney's earning ability ever in the hands of the State, and must not He take notice that all said or done contrary to the interest of the State is, ultimately, contrary to His pecuniary interests too? Arkansas' *Rules of Professional Conduct* (ARPC), Rule 2, adopts the *A.B.A. Model Rules of Professional Conduct* (MRPC). The MRPCs' *Preamble*, paragraph 1 states: **"A lawyer is ... an officer of the legal system ..."**; Paragraph 4 states **"... While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process."** Does not the term "*legal process*" describe processes created/provided for by law. Appellant challenged forms of legal process that Members of the Arkansas Bar, it seems,

are bound to uphold by the MRPC. Does not an untenable conflict manifest? Such conflict, under MRPC 1.7(b), bars representation, unless "**(1) the lawyer reasonably believes the representation will not be adversly affectived; and (2) the client consents after consultation**". Can an Accused be forced to *consent* to anything to enjoy *Assistance of Counsel*? Should He? Appellant urges He can and should Not.

Under MRPC 1.16 "**a lawyer shall not represent a client... if; ...(1) the representation will result in violation of the rules of professional conduct ...**" Appellant seeks Jury overthrow of legal processes, based on statutory enactments, which Appellant believes with conviction offend the Laws of God, of Nature, and the Fundemental Laws of the Land. ARPC, Rule 1, "*Scope of Rules*" states: "**Every attorney now licensed shall be a member of the Bar of this State, and subject to**

these rules, or those hereafter made.". "*[D]emonstrated lack of fidelity to lawyer's duty to uphold laws*" seems "sufficent cause" to suspend an attorney's license. See Louisiana State Bar Asso. v O'Halloran, 412 So. 523 (1982 La.). Can any attorney *legally* represent Appellant, and uphold *legal processes* Appellant challenges as unlawful, treasonous usurptions by the State? Appellant, as an Accused, sought Assistance of Counsel who was answerable to God and Himself, not a *Star-Chamber* "disipline committee". Appellant's request for Assistance, unsoiled by any duty to uphold the System assailing Appellant, seems reasonable, was timely made and not repented of. It has been held:

"The **right** to **Assistance of Counsel** at a criminal trial **is deemed so fundamental** to the interest of justice that denial thereof automatically **vitiates any conviction** obtained.(automatic reversal rule). This is even though there is no showing of any prejudice or unfairness in

the proceedings or even any need for having counsel." GIDEON V. WAINRIGHT 372 U.S. 335.(emp.add);
AND:
"We hold, therefore, that **absent** a **knowing** and **intelligent waiver**, no person may be imprisoned for any offence, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel. Under the rule we announce today every judge will know, when the trial of a misdemeanor starts, that **no imprisonment may be imposed, even though local law permits it**, unless the accused is represented by counsel." ARGERSINGER V HAMLIN 407 US 25. (emp.added)

The Judge knows Argersinger. *Assistance of Counsel*, as contemplated at Common Law, circa 1791, was demanded, without willing waiver by Appellant. R131:10. Judge Piazza knows from experience Appellant can't accept *licensed* counsel: It would require abandonment of deep convictions. At sentencing Appellant read the Arkansas Constitution, citing the right "...to be heard by himself and by his counsel." (R263:2)

Appellant: ...I was denied counsel of my choice. (r263:6)

Court: And that's not a **licensed attorney**, but your counsel is not a licensed attorney.

Appellant: That's right, yes Sir. And I invoke Argersinger v Hamlin. R263:12.

Court: You are going to make me mad again....

Appellant: ...I am a belligerent claimant of my rights, and this is my right, Sir... R263:13-24.

Was not Appellant denied Assistance, by Counsel of His choice, and thus, Due Process of Law, required by Ark.Const. Art.II, §8, and by the CuSA, *Preamble*, Amend. V, applied to State actions via CuSA, Amend. XIV, the Preamble, and/or Supremacy Clause? Appellant so urges. Forcing Appellant to chose either licensed Counsel [unable to *ethically* represent Him, whose relationship to the State is *repugnent* to deeply-held convictions] or no Counsel at all seems unreasonable. Shouldn't a Court inquire into and balance States *interests* in licensing Attorneys against Appellant's *Right* to Assistance of Counsel, giving

due regard to Appellant's objections to *licensure* and convictions/beliefs against same? Would not allowing Appellant a non-licensed Assistant be a less drastic response than trial without any assistance? Courts have ample powers to punish contempts and maintain control over proceedings before them. Less restrictive means of achieving the State interest in efficient administration of justice were always present at the trial. Shelton vs Tucker, 364 U.S. 479, 488, 81 S.Ct. 247,252 tells us:

"...if there are **other reasonable ways** to achieve those **goals** with a **lesser burden on constitutionally protected activity**, a state **may not** choose the way of **greater interference**. If it acts at all, **it must choose less drastic means**." (emp.added)

The *Shelton* spirit manifests in a bankruptcy case, where for *equitable* reasons, a corporation *appeared* by It's non-lawyer President, despite the general rule holding that act unauthorized practice of law. See In re MSD

Woodworking Co, Inc., 132 B.R. 631(Bkrtcy.D.S.D.1991). Denying Assistance of Counsel in criminal trials seems as drastic a response as forbidding unlicensed laymen [distingusihed from licensed professionals] to give aid under unusual circumstances. Isn't this inequitable and unconscionable? Truthfully,Appellant was forced to trial, alone at bar. Truly this charge ought be reversed, and Appellant ought be discharged from liability in this matter. Appellant so moves.

POINT 2: THE COURT ERRED IN PROCEEDING TO TRIAL WITHOUT A VERIFIED COMPLAINT OR ANY OTHER VALID CHARGING INSTRUMENT

No original charging instrument was filed by the State in this case, as colloquy from arraignment thru trial shows:

Appellant: ...But Sir, we must answer the question. Am I even chargeable in this affair? Is there a *corpus delicti* [damaged, complaining party]? Who is the injured party that has sworn a citation or complaint in this case, Sir? R117:22.

The Court: I <u>believe</u> it is the City of Little Rock. <u>Is it not</u>? (emphasis added) R118:1.

A Court questioning an Accused, asking who the complaining party is! Shouldn't an Accused be **informed** of the nature and cause of the charges, rather than be **questioned** about them?

Appellant: Is that a blood and bones individual that has sworn this complaint? R118:2.

The Court: It is according to the State law, a blood and bones individual, just like a corporate entity is an individual.

Appellant: That is quasi -- those are quasi individuals.

The Court: The City has been bleeding all over the county the last couple weeks, since they didn't pass that millage. R118:12

Appellant: But the ticket is illegal, totally illegal.

The Court: **I am not worried about whether it is illegal** ... Have you been through municipal court on these charges? R120:22.

The Court apparantly assumes Appellant waived the right to object to insufficient process, possibly by bringing appeal *de novo*. Nothing in this

record indicates waiver, and any such was verily procured without consent or consideration by Appellant.

Appellant: Yes. I don't understand it. I didn't understand it there.... R121:9

Appellant lacked understanding of the nature and cause of the charges, yet explanation was not forthcomming from the Court:

The Court: But you understand what the paper said, whether you understand what was written on there or not doesn't make any difference. R121:12

Does not an Accused have a Right to be formally charged, to be aware of that charges nature, and to see and examine the charging instrument(s)? Does any *express* waiver of this Right appear in this Record? Whould not any waiver need be made knowingly, at bar, and with prior Assistance of Counsel?. Appellant never appeared generally, and explicitly reserved all rights. Let the State show waiver upon the record, from the mouth of

Appellant. Appllant has not knowingly waived any Right.

Then again, at R154:8-11 the Judge stated to the jury:

"..The violation and allegation is that on September 6, 1991 the Little Rock Police Department ticketed and arrested Mr. Theodore Jones for carrying a weapon, having no driver's license, no state license, no proof of insurance, and no inspection sticker."

The Judge did not read that statement from a Complaint, but narrated it. Where in this Record is the proper, sworn, original Complaint produced and read to Appellant during this action?

Appellant: "...the original copy of the ticket. ... wasn't the copy returned to the court? R179:24

The Court: I don't know. You can look through the file, see if you can find it. (emphasis added).

Should an Accused have to locate or produce the State's Complaint for the Court's perusal, or establish the State's cause of action? Did the State introduce a charging instrument? Appellant timely

and specifically objected to this anomoly:

Appellant: There is no complaint against me, What are we doing up here in court? (R180:4) ...May be the prosecution can, Sir, but in the absence of a charging instrument, this case ought to be dismissed right now. R180:17

The Court: It is the Court's opinion that is not a necessary document to have the original, that [you] were informed of the nature of the charges and have a copy of the charges this officer made against you. R180:24

Appellant: But the copy I have, Sir, I allege, is not an exact copy of what was supposed have been returned to you. If it is not-

The Court: (Interposing) It is the Court's holding that the Defendant was apprised of the nature of the charges and he was arrested on the charges and is fully cognizant of those charges as we come here today, R181:9

Appellant: ...But in the absence of a charging instrument-

Ms. Fewell: (Interposing) ...the citation is the proper way to charge... with a traffic or misdemeanor...R181:19.

Truth, from the mouth of the Accuser - " **the citation is the proper way to charge...**". The objection is the total absence of a legally sufficient citation

or any other charging instrument. The Officer testified, and identified a copy of the Uniform Traffic Ticket and Complaint (UTTC)/(SUMMONS) he issued to the Defendant at R179:9, and gave its number as 459722, at R182:23. Appellant objected to this glaring lack of a Complaint:

Appellant: If the original is supposed to be the prosecuting instrument is not available to the court, I cannot show that the copy the officer gave me is not a copy of what he is supposed to have returned to the court, and the Court is proceeding without authority. R184:24

The Court: Mr. Jones , I'm going to give this to the clerk. This is the appeal transcript that was certified from below on this issue. It contains the COPY of the Uniform Traffic Ticket along with an appeal transcript. I want to .. show the defendant was aware of the nature of the charge...(emphasis added) R185:4

At this juncture please note: a copy, not an original, signed Complaint, was entered as the Complaint. This in full hearing of the Jury - but for Appellant's advanced age and poor hearing, there would be a motion for Mistrial recorded

here, as the words "from below" and "appeal transcript..." **disclosed to the Jury a previous trial and conviction**, "on this issue"! Appellant's inability to hear what was done prejudiced His ability move for mistrial. Several lay bystanders, desirious of Assisting Appellant, tried to tell Appellant of this obvious error, but could not, as the Court had refused (R152:1) to permit anyone to Assist Appellant. Is it proper for a trial judge to act as an auxilliary prosecutor by filing the State's Complaint? Appellant urges this violates the seperation of powers provision of the Article IV, section 2, Arkansas Constitution 1874, and was prejudicial, as lack of a proper charging instrument was ruled fatal in a Washington case involving the UTTC. See Town of Orting vs. Rucshner, 404 P.2d 983(1965). Therein it was held that failure to file complaint and citation rendered

proceedings void. Does not filing the complaint, not arrest, commence the action and confer jurisdiction thereof? See State vs Zdovc, 106 Ohio App. 481, 151 N.E.2d 672 (1958), *accord*: McDaniel vs State, 309 Ark. 20. Did not the judge herein actively assist the prosecution in establishing It's case? Shouldn't a judge, if anything, be benignly neutral? Is it not prejudicial error, unethical behavior, or a usurpation of office for a judge to act as prosecution *and* judge, by introducing and spreading *crucial* documentery evidence upon the record, *sua sponte*, for a party litigant? Remember the Accused, an elderly man, sat alone at bar, facing two lawyers, virtually naked to the awesome power of the State. Does this not conflict with Ark.Const. Art. 7, §18:

"The judges of the circuit courts ... shall not ... hold any other office of trust or profit under this State...",
and;

Art. 7,§24: "The judges of the ... circuit courts ... shall not, during their continuance in office, practice law or appear as counsel in any court, state or federal, within this State."

But for the Judge, not even a poor photocopy of the alleged Complaint would haunt this Record. With trial one-third over, the lower court transcript was introduced and admitted as evidence of the charge, on trial *de novo*! Was this not an appearance? The practice of law? An abandonment of office? Appellant so urges.

Isn't this preversion of the remedy of a trial *de nova*? Consider:

> A "trial de nova" is one which is had as though the suit originated in the court in which such trial is had and a new complaint or amendment to the old may be filed provided it does not exhibit an entire change in, the original form of action. ODLE V MCCORMACK 206 SW2d 416.

Comparison of the *Alleged* Complaint, Court's Exhibit 1 R269-270, with The Complaint issued Appellant (Defendant's Exhibit 1) shows the two are diverse. One hails as a SUMMONS, the other does not.

Were either of these copies of the UTTC exactly the same as the Original, presumed to have been returned to the lower court? It can not be determined. The UTTC is a process unknown to, and in derogation of Common Law. Must not statutes defining such processes be strictly adhered to, if the process is to be effectual? See Sims v. Prescott Feed Mills, Inc. 286 Ark. 22, 688 S.W.2d 743 (1985). This case presents: a lack of production of a proper, original complaint; timely challenge to the Court's jurisdiction; no general appearance by Appellant; and, a reservation of rights in that regard. All Appellant could do to preserve jurisdictional and charging issues for review was done, save walking out, at grave risk of physicial assault. Appellant pleads prejudice from lack of knowledge and information as to the nature and form of the charging

instrument (Summons, Citation, or an unknown form). Without specific knowledge, Appellant could not frame a proper defense. Should a copy of a document should be introduced when a party has, or could secure, an original, being the "best evidence"? Lack of the true Complaint deprived Appellant an opportunity to effectively cross examine the Charging Officer. Appellant contends the trial court erred in: trying this case without a charging instrument being produced for reading to, and/or inspection by the jury; by not dismissing at first challenge (at arraignment) to produce a charging instrument (R117:22); by not requiring production of a charging instrument duly sworn to by a blood and bones individual person; by proceeding to trial over Appellant's timely objection showing express lack of understanding of charges. (R155:9); and by proceeding to trial and sentance on a <u>specially</u>

contested and unproven jurisdiction. Is this not a fair statment of the facts?

Was not Appellant deprived of Due Process of Law, per Arkansas Constitution Article II Section 8, and per the CuSA, Amendments No. 5 and 6, applied to State action via the 14th ammendment, the Preamble, and/or the Supremacy Clause? Appellant so urges, as each device for obtaining personal, criminal jurisdiction has peculiar requirements of substance and form, therefore, diverse procedures exist for challenging the sufficiency of each. Did not denying Appellant information to become fully appraised of the precise form and nature (Summons, Citation, Information, etc.) of the charging insturment prejudice the Defense? Appellant so urges. Do express waivers of the Right to be informed of the nature of the charges, or to a proper copy of a lawful complaint exist in this Record? Appellant finds none. Doesn't

this leave Appellant standing uncharged at law? Appellant so urges. As shown in Point 3, *supra*, Appellant has doubts as to the defense(s) which might be applicable in this case. Did not Appellant's Adversaries and Accusers receive from the trial court, by It's allowing the State to proceed absent a personally sworn, legally sufficient and filed complaint, potential protection from civil liability? If Appellant was compelled to Court by invalid process, did not the complaining Officers act as Private Citizens? Was there authority present to require Appellant to appear in court, when Private citizens can not arrest for misdemeanors? Appellant did and does urge there is not. See Perry vs. State, 303 Ark. 100, point 7, and dissent of Hays and Glaze, p.105,106. Denial of an Original Complaint made it impossible for Appellant to establish that the Officer acted within or without scope of

lawful Office. Let the State now prove the Officer did act lawfully. Appellant suspects an attempt was made to deprive Him of civil redress. Was the Trial Court's refusal to hear and determine Appellant's *demur* (or plea to jurisdiction) at arraignment, 21 November 1991, R116:2 an artifice to get Appellant to implicitly waive all legal objections, or, alternatively, to collaterally estopp Appellant from later seeking civil redress for false swearing, malicious prosecution, or other torts? Appellant so urges. Appellant was prejudiced in this, and possibily in prospective civil action. Without a general appearance and proper plea to a proper charging instrument, or some knowledgable waiver and submission to the proceedings, was jurisdiction conferred on the Trial Court? Was any conferred jurisdiction sufficient to support a sentence? Appellant urges not. Is not a circuit

court authorized to enter pleas only for those who refuse to plead, and is not a plea to the jurisdiction of the Court (demur) a proper plea?. Does the Recrod show Appellant plead "not guilty", or refused to plead? Does a valid charging instrument appear in this Record? What confercd jurisdiction on the Court? Can a court enter a "not guilty" plea *sua sponte* for an Accused, absent refusal or inability to plead? Arkansas law provides for demurrer to criminal charges at arraignment. See Ark. Code Ann. 16-85-707 et seq. Appellant's *demur* pends, over timely, specific objection brought to the Court's attention. Appellant sought a ruling, yet the Court refused to take it up, and went on to trial, without legal determination of the *demur* being made. R116:2-R117:22. Does not personal criminal jurisdiction require both general appearance and a properly entered "guilty", "not guilty", or "nolo

contendre" plea? Appellant's *demur* was a plea, to the personal jurisdiction of the court, based on legally insufficient, failed process. Could personal jurisdiction attach thereby? Or a limited jurisdiction to legally determine if jurisdiction did, in fact exist? Appellant urges the latter. The alleged jurisdiction, timely and specifically challenged, seems unproven by the prosecution, to exist as a matter of law in the Record. Absent personal jurisdiction, a condition precedent to a valid judgement, is not all else *coram non judice*?. This Court recently declared a sentence imposed absent lawful charging unlawful and void. See McDaniel vs State, 309 Ark. 20. Is it not prejudice to be tried absent jurisdiction or waiver? Here presents a case with: a lack of proven jurisdiction; a lack of a plea of "not guilty", without any refusal to plead; and a Court's refusal to first rule on a

preliminary plea(in form and nature of a demur) - before entering *It's plea* of "not guilty" *for* Appellant. There is no original, sworn or lawful charging instrument in this Record. There is the exposure of the Jury to evidence of a prior proceeding below. There is a sentence apparrantly imposed without jurisdiction by the Trial Court. For these alleged errors, Appellant moves this case be reversed, and for discharge from further liability on these charges. Appellant specifically seeks a legal determination that no waiver of any right essential to civil recourse has occurred. Must Appellant suffer collateral estoppel, touching any issue, as a result of heavy handed procedural shenanigans below? Appellant urges not, and prays for a favorable ruling here on these matters.

POINT 3:THE COURT ERRED IN FINDING THE UNIFORM COMMERCIAL CODE (UCC) NOT APPLICABLE IN THIS CASE

At issuance of the UTTC, Appellant signed the ticket "without prejudice UCC §1-207" (see Court's Exhibit #1). Appellant expressly desired to reserve all rights, including the right to revert to common law, per UCC §1-103. The court ruled the common law not applicable R142:2. At R199:1 Appellant testified, as a matter of factual knowledge, to having learned through study that the UTTC presents attributes of a quasi-contract in commerce, and that it thus came under the umbrella of the Uniform Commercial Code(UCC). The Court opined otherwise, and the Appellant timely and specifically objected:

The court: At R199:15: "... the Uniform Commercial Code,... is not applicable to this case in any form or fashion. ... Your objection is noted..."

At R199:21 Appellant testified to reading *Black's Law Dictionarys'* definition of the word "uniform", and at R200:1 to "traffic", but was interrupted.

Appellant's intention, stated at R200:17, to show by definition that the UTTC is an instrument of *traffic*, that is, of *commerce*, and that the trial was a commercial(equitable) trial, being conducted in a criminal court, on a set of charges based on **private statutes and special laws**. Despite the criminal form, the action appears civil in nature. Appellant, being unappraised of the *nature* of the charges brought, was prejudiced by lack of opportunity to learn of, establish, or have proven the nature thereof. Appellant sought to inform the Jury that reasonable doubt existed as to factual questions surrounding the prosecution. One may choose to believe, or disbelieve a witness, based on one's perceptions of the candor and motivation of that witness. Each of the copies of *tickets* raise in "conspicuous print" a title giving reasonable doubt as to the nature

of the "*charge*" being assessed, made, or what have you. If the Jury had disbelieved the veracity of the witnesses, or concluded that the Private Statutes did not apply to Appellant, aquittal was probable. These factual arguments were withheld from presentation to the Jury only by judcial action.

The court: I've already ruled on that issue....I've already ruled that this is not subject to the UCC. The Arkansas Legislature has defined these laws. We are going to stick with their definitions, R200:23.

The Judge overlooked Title 85 Arkansas Statutes of 1947(UCC) as being law, depriving Appellant His remedy, and due process of law. The Court did not indicate where the UCC specifically is excluded from application to *traditionally* criminal matters. Are not Statutes to be read in harmony if at all possible. In "hot check" prosecutions, the UCC is held authoritative in determining if a document is within the

definition of a "check", "instrument", etc. See Faulkner vs State, 445 P.2d 815 (Alaska.1968). The remedy of Appellant was refused, yet the "Traffic Ticket" was signed "without prejudice 1-207." See Court's Exhibit 1 R269. Section 1-207 of the U.C.C. reads:

"(1) A party, who, with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient."

U.C.C. Section 1-201 (1) defines terms relevant to this study of the nature of "Traffic" tickets thus:

"Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined."(emp.added)

Appellant's rights were determined by action on the UTTC's.

"Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Act (sections 1-205[1] and 2-208[2]. Whether

an agreement has legal consequences is determined by the provisions of this Act, if applicable; otherwise by the law of contracts (Section 1-1-3[3]). (emphasis added)

The UTTC contains a promise to appear on it. It is an agreement, an undertaking. Black's 5th Edition defines an undertaking as a "promise, engagement, or stipulation. ... a promise given in the course of legal proceedings by a party ... generally as a condition to obtaining some concession from the court or the opposite party." Appellant *undertook* to come to court, in *exchange* for release without physical arrest. The UCC provides either the UCC or contracts law applies to agreements, of which undertakings and such seem to be a subspecies. Arkansas adopted the UCC, repealing all laws contrary thereto. The original UTTC, bearing the reservation of rights, was not produced in court. Third-party documents, per UCC §1-202, are *prima facie* evidence of their

authenticity, but this *presumption* was rebutted by Appellant. No sworn "charging" instrument was ever produced. The validity and veracity of the copy was challenged. The "rights" of Appellant were "determined" in the proceeding below, well within the UCC definition of "action". Is not "Traffic" law of a *special*, *regulatory* and *civil* nature, *criminal* or *statute merchant* penalties notwithstanding?

The State, for want of proper *charging* instruments, should be deemed to have elected remedies, to have waived, and to be estopped from objecting to Appellant's position that the proceeding were civil and/or under the U.C.C. "Parties" may elect what body of law that governs a transaction. U.C.C. §1-105. Did not the lack of strict compliance with Criminal Procedure establish by implication that the action was not *purely* criminal, but was like unto a qui-

tam collection action. Some States freely admit "traffic" actions are civil in nature. The State should be deemed to have waived criminal jurisdiction and venue, for failing to produce evidence of same on demand. Could nto the action be classified qui-tam, or a collection action on Commercial Paper: the UTTC? The UCC is referred to often as the "New Age Common Law" of the Nation, and the World. Perhaps this Court should touch upon this issue as a case of the first impression. Additionally the UCC is the "common law" of the Legislative Democracy, that "United States", created by Article 1, section 8, clause 17 of the Constitution for the united States of America. Congress has total control and dominion over the seat of government, Washington D.C. The District of Columbia has adopted the UCC. 28 U.S.C §1332(d), the jurisdiction statute for the Federal Courts, specifically defines the "United

States" as *including* the District of Columbia. Includes seems there a term of limitation. That entity applies It's laws (of the §1332(d) "United States") via the District Courts, to such persons and entities as they may apply to. It has used such statutory creatures as 42 USC §1983 et al to enforce it's citizens' privileges against encroachments by State Actors since the reach of that entity was extended to the States via the Federal military victory of 1865, and by subsequent adoption of the 14th Amendment to the CUSA. Thus, the UCC is now "Federal Common Law" in a real and tangible sense. Generally, the only Federal Constitutional Rights enforceable against the States are those which have been selectively applied to State actions by the 28 USC §1332(d) "United States" Courts, via the 14th Amendment. Arkansas has, however, enacted and ratified the UCC; therefore the Courts of Arkansas

should recognize that body of law. Appellant argues that, absent a proper criminal trial, as contemplated by English Common Law, He was entitled to plead and assert any and all remedies reserved under the U.C.C. "*Rights*" includes "*remedies*" within the UCC. See U.C.C. §1-201(36). Appellant is under no agreement with the State as regards the subject matter, except that made by signing the Ticket. That agreement was brought within the purview of the U.C.C. by the reservation of rights clause added by Appellant, per U.C.C. §1-207. The State, by proceeding on that Ticket, ratified the offer of Appellant to proceed under that body of law, and to honor the reservation of rights. The record shows no agreement between Appellant and the State, save Appellants reservation of all rights and undertaking to come to court. States are held to Their contracts in plea bargins - a

contractual relationship springing from a criminal charge; the State should also honor this agreement. The Prosecution introduced no agreement at trial, and Appellant objected. Even the civil cause of action fails for want of competent evidence of an agreement, note, or other instrument proving a liability to the State. The case should be reversed, and Defendant should be "discharged" of all liability under any "instruments" issued by the State or It's Agents.

POINT 4: THE COURT ERRED IN SWEARING AND INSTRUCTING JURY, AND IN FRAUDULENTLY FAILING TO ALLOW JURY TO DECIDE LAW AND FACTS.

A. The jury swearing is recorded thusly:

The court: "Ladies and Gentlemen if you will please stand and raise your right hand." R163:23 (therefore the jury was sworn to the case)

Appellant objected R164:3. The oath is not recorded. The record shows the jury was not sworn in keeping with the following holding of the Arkansas Supreme Court, given at R164:10:

"It is not sufficient in a criminal prosecution to swear the jury well and truly to try the issue joined and a true verdict render according to the evidence. The jurors in such case are the judges as well of the law as the facts and consequently should be sworn to try the case according to both, or at least it shall appear that they were regularly or duly sworn. Yet, as the swearing of the jury was clearly defective, the judgement of the Circuit Court must be reversed." Sanford V.State 11 Arkansas 328.

Was the jury properly sworn to try both the law and the facts? Consider aso PLEASANT V STATE 13 Ark 350. The case veers somewhat but qualifies unequivocally SANFORD, supra. Appellant moves for reversal and discharge for an improper jury oath.

B: The court failed to give improper instructions to the jury.

The jury was not instructed according to "Teche Lines V. Danforth" 12 So 2nd 784, which stated in pertinent part:

"The right... to travel upon the public highways...is a common right ... It includes the right...to use the ordinary and usual conveyances...includes the right ... "TO OPERATE AN AUTOMOBILE"

The Court: ... you have a right to travel. The state alleges that travel when you are operating a motor vehicle ...requires a driver license. R215:14-R216:14. It will be denied.

This in spite of proposed and denied Instruction "B" to wit:

> The right to travel is part of liberty of which a citizen can not be deprived without due process of law." KENT V. DULLES 347 US 116. R216:19

Appellant tendered nine jury instructions (R215 through R221), from sound, on point court decisions regarding His position and jury instruction, all were denied. Appellant moves the case be reversed, for prejudice from improper instruction of the Jury, which could have found Appellant Not Guilty. given proper and fair instruction in both sides of the issue of whether Appellant must be licensed to travel in a car on the highway.

Alternatively, the jury could not function as the 6th Amendment Jury (existing in 1791), to which Appellant

has a Federal Right to have the issues tried to, and which should judge both Fact and Law. But for improper, State-biased instruction, the outcome could well have been for acquittal.

C: At arraignment the Judge agreed that at trial the jury would reconcile controversies at law, Appellant relied on this fact.

Appellant: At this time I want to introduce this controversy at law. Is the Court prepared to reconcile a controversy? R119:2

The Court: That's what the jury is going to do...R119:5

The Judge continued on through R119:16, showing he would answer no more. Relying upon the Court's word the jury would reconcile all law issues, Appellant built a defence upon Law, and Legal controversy. Then before the jury, at least fourteen (14) times, the Judge refused to permit Appellant to submit controverted law to the jury for consideration. These denials may be found at R161:9; R163:4; R169:15; R170:12, and

more exist. This despite citations given (R161:18) such as:

"Here there was an issue regularly formed which involved Pquestions of law as well as facts and upon which the jury were required to pass. In all criminal prosecutions under our Constitution and laws the jury are the judge of both the law and the evidence. R161:18." PATTERSON V STATE. 7 Ark 59

Also there is credible authority that:

"Counsel should allowed, on the trial of a criminal cause, to read to the jury suitable statements of the law from works of approved authority". WINKLER V STATE 32 Ark 539

The Judge denied reading legal matter to the jury:

The Court: "Mr. Jones, the next time you mention that, I'll hold you in contempt." R249:18

Is not this flying fully in the face of clear holdings of this Court? Cleary at some point this was the method for conducting jury trials. Unless the right to this form of jury trial has been substantively modified, revoked, or suspended, it should yet exist, as it did upon ratification of the CuSA in 1791,

and likewise at ratification of the Arkansas Constitution in (1874). Can the Legislature,or the Courts *legitimately* abridge, revoke, alter or infringe this right? Consider UNITED STATES V DOURGHERTY 473 F 2d 1113 at 1132:

..We are aware of the number and verity of expressions at that time from respected sources-John Adams;- Alexander Hamilton;- prominent judges; -that jurors had a duty to find a verdict according to their own conscience, though in opposition to the direction of the Court; that their power signified a right; that they were judges both of law and fact in a criminal case, and not bound by the opinion of the Court. (emp.added)

In light of Dourgherty, *supra*, Consider the Court's holding:

The Court: I disagree Mr. Jones. This jury will not decide on issues of law. R170:12, and:

The Court: They do not have the option of deciding the law. R161:14

Appellant suffered prejudice from being mislead by the Judge into believing the Court would permit the jury to determine law, *per stare decis*, which was refused at trial, devastating Appellant's

defense, and denying Him Due Process of Law. Appellant would offer that, if any rule or statute purports to change the common law right to jury trial, that statute is void under common law, per the ancient rule in Boham's Case, 8 Coke, 113b, 77 Eng.Reprint, 646 (1610), 8 Coke 107a, 77 Eng.Reprint, 638(1608). Appellant moves for reversal and discharge.

POINT 5;: THE COURT ERRED IN UPHOLDING CONVICTION OF CARRYING A WEAPON IN VIOLATION OF A.C.A. §5-73-120

Did not the Court err in allowing a statute of the Legislature to make void the Natural and Legal Right of Appellant to possess on His person effective means of protecting Himself by prudent self-defense. It was held:

"The Legislature may, to some extent, regulate the mode and occasion of wearing war arms, but to prohibit a citizen from carrying such weapons except upon his own premises or when on a journey, or when acting as, or in aid of, an officer is an unwarranted restriction on his constitutional right. Wilson vs. State, 33 ARK. 557"

Please note distinction between "wearing" and "carrying". Can it can not be fairly said there is a difference between *wearing* of arms and the *carriage* thereof. Wearing arms is apt to provoke affray and ill will. Carriage of arms with discretion is another matter. Has our Constitution changed in any way since the decision in *Wilson*, supra? Howbeit then, that Legislative edicts regarding carriage of arms have suddenly come to be interpreted as legitimate, if the Constitution be unchanged? Clearly, the Rights of the People stand usurped. Appellant, as one of the *Posterity* of those *People* who established this Nation, inherits all Rights that those People possessed in 1791, including a Right to carry or bear arms, recognized before the Magna Charta(1215), and made mandatory by the *Statute of Winchester*(1285), of which it was said in D.H. Montgomery's *Leading*

Facts of English History, 2d. Edition, Ginn & Co., Boston, 1896, page 119, §276:

"Every citizen was required to keep arms and armor, according to his condition in life, and to join in the pursuit and arrest of criminals."

This may be an origin of the *Posse Comitatus*. Free Englishmen, since time immemorial, possessed arms at Their Pleasure, save when Tyrants ruled by Force or Deceit. Is not this right one of the bundle of rights included, of necessity, in the Right to Life, Liberty, and Pursuit of Happiness? Can One be Happy if one must face Mortal Danger unarmed? The "Right to Life" is an empty metaphor absent the ability to defend Life, and implies a power to do so. As one of the *Posterity* (*Preamble*, CuSA), Appellant is entitled to all Rights acknowledged in that document, and the Arkansas Constitution of 1874 as well. Amendments 9 and 10 to the CuSA reserve all Rights not surrendured to national

government to the States and/or to the People. Neither Government has a duty or right to defend Appellant's person or property, that power - existing at common law, inured to the *People*, <u>individually</u>. Arkansas has adopted the Common Law as the rule of decesion, unless specifically displaced. The body of law gives Appellant the Right and Duty, by devolution, to defend Himself, in the customary manner of Our People. A Right or Duty carries with it such *implied* Power as necessary to give It force and effect. Appellant therefore has a Power, independent of statute and without the scope of the Legislature to curtail, to do those things needful to give meaning and effect to the well-recognized Right to Life, and the included Right of Self Defense. In addition to the Second Amendment and Arkansas' analog, Appellant relies on the Supremacy Clause, the Preamble, and the Article I of the CuSA

as securing that right from legislative encroachment by this State. See Boham's Case, *supra*. Freemen were historically allowed arms, save when King or Usurper(s) tossed the Principles of Liberty aside in the name of expediency. Appellant inherits this Right from His Ancestors, the Posterity. Unless Our Government has somehow changed, Freemen still have that Right. This assumes that there are Freemen, and that Appellant is one; wherefore, this Appellant declares this is His status, if this be false, let the State exhibit all formal incidents and instruments of His implied condition of Slavery and Servitude. Absent that proof, Appellant moves for reversal and discharge.

CONCLUSION

For years Appellant has risked His Health, Liberty, and Fortunes all in an an effort to reclaim Fundamental Rights, Rights constituting the Heart and Soul of

this People. Rights wrestled from Tyrants, at fearful price, over ages. Rights enshrined in documents ranging from Magna Charta to the Constitutions of the republics of Arkansas and the united States of America. Rights given Moses by God Himself from the cloud on mount Horeb. Rights stolen by incremental erosion, Lawlessness, and Treasonous departures from time honored precepts of limited government. Appellant is no Scofflaw, nor interested in "getting away" with anything. Appellant is keenly aware of governmental departure from the Rule of Law into the releam of Considerations of Public Policy. Did not Caiphas, High Priest of Jesursalem, find it <u>expidient</u> that one man should die for the country? Expidiency is Public Policy. For the foregoing, Appellant asks discharge from his conviction, reversal and dismissal of the case, and for judicial determination He is not

collaterally estopped or procedurally precluded from raising any matters, in any other litigation, he has not knowingly or expressly waived herein or below.

Original signed by Theodore Jones, in propria persona

CERTIFICATE OF SERVICE
text omitted

APPENDIX C

STATE'S SUPPLEMENTAL ABSTRACT AND REPLY BRIEF

STATE OF ARKANSAS' SUPPLEMENTAL ABSTRACT AND REPLY BRIEF

Submitted on behalf of Honorable Winston Bryant, Attorney General by Brad Newman, Assistant Attorney General of Arkansas

* TABLE OF CONTENTS AND POINTS AND *
* AUTHORITIES OMITTED *

[page break]

POINTS TO BE RELIED UPON

I.

WHETHER THE TRIAL COURT ERRED BY DENYING APPELLANT HIS COUNSEL OR CHOICE AND INSISTING THAT HE BE REPRESENTED BY A LICENSED ATTORNEY... 1

II.

WHETHER THE TRIAL COURT ERRED BY PROCEEDING TO TRIAL WITHOUT A VERIFIED COMPLAINT OR OTHER VALID CHARGING INSTRUMENT..... 2

III.

WHETHER THE TRIAL COURT ERRED BY FINDING THE UNIFORM COMMERCIAL CODE DID NOT APPLY TO THIS CRIMINAL CASE.....4

IV.

WHETHER THE JURY WAS PROPERLY SWORN, WHETHER THE JURY WAS PROPERLY INSTRUCTED, AND WHETHER THE JURY DETERMINES WHAT THE LAW IS..... 4

V.

WHETHER THE TRIAL COURT ERRED BY CONVICTING APPELLANT OF CARRYING A WEAPON IN VIOLATION OF ARK. CODE ANN. §5-73- 120.....7

SUPPLEMENTAL ABSTRACT

[ABSTRACTOR'S NOTE: The following exchange between the trial court and appellant occurred at a pretrial hearing held February 6, 1992:]

THE COURT: Do you want to sit down and talk with the Public Defender, or do you need time to hire a licensed attorney to help you in representing you in this matter?

APPELLANT: I don't want anybody representing me. That is taken up there, also. I don't want anybody to represent me. I want to defend myself, not as -- not represent myself, I want to defend myself. (T.128)

[ABSTRACTOR'S NOTE: The following colloquy occurred during appellant's cross-examination of NATHAN TACKETT, a witness called by and on behalf of the State:]

OFFICER TACKETT: There is some additional what appears to be statute numbers written in pencil on the ticket. I have no idea who wrote those on there.

APPELLANT: I did. (T. 186)

ARGUMENT

I.

WHETHER THE TRIAL COURT ERRED BY DENYING APPELLANT HIS COUNSEL OF CHOICE AND INSISTING THAT HE BE REPRESENTED BY A LICENSED ATTORNEY

This appellant is well known to the trial courts of Pulaski County. Over the years, he has been involved in numerous proceedings at both the trial and appellate levels, and in virtually all instances he has appeared pro se. Appellant routinely contends he has the right to be assisted by persons who are not licensed attorneys. His reasoning is that because attorneys are licensed by the State, and because the criminal charges against him are brought by the State, all attorneys are so unduly influenced by the "fact" they owe their very livelihoods to the State that they cannot provide him with adequate representation.

At a pretrial hearing in this particular case, the matter of counsel was raised. The trial judge advised appellant of his right to counsel and recommended that he have an attorney. Appellant replied that he had filed a

motion for "assistance of counsel of my choice that is not a licensed attorney." The trial judge stated he would grant appellant a licensed attorney, and offered to let appellant speak with the public defender. Defendant then stated, "I don't want anybody representing me. That is taken up there, also. I don't want anybody to represent me. I want to defend myself as myself, not as -- not represent myself, I want to defend myself." (T.127-128)

In Wheat v. United States, 486 U.S. 153, 159 (1988), the United States Supreme Court stated:

> The Sixth Amendment right to chose one's own counsel is circumscribed in several important respects. Regardless of his persuasive powers, an advocate who is not a member of the bar may not represent clients (other than himself) in court.

Relying on Wheat, the Arkansas Court of Appeals addressed this same issue in an earlier case involving this appellant, and held that appellant was not entitled to have a non-attorney "next friend" represent him. Jones v City of Newport, 29 Ark. App. 42, 780 SW2d 338 (1989). See also Nichols v. State, 273 Ark. 466, 620 SW2d 942 (1981).

Clearly, appellant has no constitutional right to receive legal assistance from a person who is not a licensed attorney. Appellant appears in court frequently and is quite familiar with courtroom procedures. There is no question but that he intelligently waived his right to have licensed attorney represented him and proceeded to trial pro se knowing full well the possible consequences of doing so. This point is simply without merit.

II.

WHETHER THE TRIAL COURT ERRED BY PROCEEDING TO TRIAL WITHOUT A VERIFIED

COMPLAINT OR OTHER VALID CHARGING INSTRUMENT.

Appellant's argument on this point is difficult to understand, but regardless, it has no merit because the evidence is clear the charges against him were brought by means of a citation issued by Officer Nathan Tackett of the Little Rock Police Department. In fact, appellant admitted during his cross examination of tackett that he had a copy of the ticket. (T 181). Further, when Tackett stated he did not know who wrote some statute numbers in pencil on the ticket, appellant admitted that he had done it. (T. 186). The ticket was admitted into evidence as a court's exhibit, and shows it was signed by appellant. (T269).

The appellant has been previously tried on charges identical to the ones for which he was being tried here. At least one of his prior trials took place before the same judge who presided here

[See Jones v State, CACR 92-958 (March 31, 1993)], and appellant raised this same argument in that case. Any attempt he makes to claim he did not understand the charges against him cannot be taken seriously. This is a prime example of a "boy who cried wolf situation. Addressing this same issue in Jones v City of Newport, supra, the Court of Appeals held that the ticket conformed to the statutory requirements for such documents, thereby informing appellant of the nature of the charges against him. Likewise, this Court should reach the same conclusion."

III

WHETHER THE TRIAL COURT ERRED BY FINDING THE UNIFORM COMMERCIAL CODE DID NOT APPLY TO THIS CRIMINAL CASE

In this case, appellant was charged with driving without a driver's license, having no car tags, having no vehicle inspection sticker, having no automobile

insurance, and carrying a prohibited weapon. Appellant makes again what has become one of his standard arguments; that is, that the Arkansas Uniform Traffic Citation is an instrument coming within the purview of the Uniform Commercial Code. Appellant's argument demonstrates his complete misunderstanding of what the UCC is, and this point is not deserving of further argument on behalf of the State.

IV
WHETHER THE JURY WAS PROPERLY SWORN, WHETHER THE JURY WAS PROPERLY INSTRUCTED, AND WHETHER THE JURY DETERMINES WHAT THE LAW IS

Ark. Code Ann. §16-89-109 (1987) sets forth the oath to be administered to jurors. The record in this case indicates that the jury was sworn, but it does not include a verbatim recitation of the oath they were given. (T. 163) Therefore, there is no record before this Court showing that the oath administered was improper. As it is appellant's burden to

produce a record showing that error has occurred, Odum v State, 311, Ark. 576, 845 SW2d 524 (1993) , this point has not been preserved for appeal. When the record shows that jurors were sworn but the form of the oath administered is not set out in the record, this Court presumes, absent any showing to the contrary, that the oath administered was in proper form. Hurley v State, 29 Ark. 17, 28 (1874). That being the case here, appellant has shown no basis for reversal.

(b) Jury Instructions

Appellant submitted nine jury instruction which were refused by the trial court as being either erroneous statements of the law or being duplicative of instructions contained in the AMCI. In essence, the proffered instructions asserted what appellant perceives to be a constitutional right to operate an automobile without regulation

by the State, his view that the jury determines what the law is, and his opinion of how the jury should be sworn. (See Jones v City of Newport, supra.)

Non-model instructions are to be given only when the trial court finds that the AMCI instructions do not accurately state the law or if the AMCI does not contain a needed instruction. Cavin v State, 313 Ark. 238, ___ SW2d ___ (1993). While appellant has abstracted the instructions he proffered, he has not abstracted the instructions given by the trial court, so this Court cannot determine exactly what the jury was told. Porchia v State, 306 Ark. 443, 815 SW2d 926 (1991). Neither does the record show that appellant objected to any of the instructions which were given, rendering fatal his right to have the matter reviewed on appeal. Nichols v State, 306 Ark 417. 815 SW2d 382 (1991). Therefore, this argument has no merit.

(c) the jury as determiner of the law

Appellant relies on case law that is over a century old in asserting that the jury is the judge of both the law and the facts. A reading of not only his arguments here but also of statements appellant has made during the lower court proceedings indicates that he interprets this to mean the jury, rather than the legislature, determines what the law is, and that the jury is not bound by the court's instructions on the applicable law. If the jury disagrees with laws passed by the General Assembly, appellant claims, the jury can disregard those laws and decide a case according to what it believes the law should be. In fact, some of appellant's statements suggest that he believes the legislature has no authority to enact laws. A system such as the one appellant proposes would necessarily result in anarchy and chaos since the law

would be subject to change every time a jury reached a verdict.

This question is settled by Ark. Code Ann. §16-89-107 (1987), which provides that issues of law are decided by the court, and that factual issues are determined by the jury. Of particular pertinence is subsection (a) (3), which provides:

> All questions of law arising during the trial shall be decided by the court, and the jury shall be bound to take the decisions of the court on points of law as the law of the case.

Again, this point is meritless.

V.

WHETHER THE TRIAL COURT ERRED BY CONVICTING APPELLANT OF CARRYING A WEAPON IN VIOLATION OF ARK. CODE ANN. §5-73-120

This argument cannot be considered because appellant has not abstracted the motion he filled on this point. Because the record on appeal is confined to that which is abstracted, the failure to abstract a critical document precludes

the Court from considering issues concerning it on appeal. Vickers v State, 313 Ark. 64, ___ SW2d ___(1993). Appellant seems to be challenging the constitutionality of Ark. Code Ann. §5-73-120 (Supp. 1991). He has cited no authority holding that states may not impose reasonable restrictions on the right to bear arms. In fact, this Court has long upheld statutes placing restrictions on a person's right to bear arms. See, e.g., Haile v State, 39 Ark. 564 (1882); Wilson v State, 33 Ark. 557 (1878); Fife v. State, 31 Ark. 455, (1876); Carroll v. State, 28 Ark. 99 (1872). Statutes are presumed to be constitutional, and the burden of proving a statute is unconstitutional is upon the party challenging it. If it is possible to construe a statute as constitutional, the Court must do so. State v. Torres, 309 Ark. 422, 831 SW2d 903 (1992). Appellant seems to make only a general

assertion that any restriction on the right to bear arms is unconstitutional. He has failed to demonstrate how §5-73-120 is unconstitutional in any particular. Therefore, hie has failed to meet his burden.

To the extent appellant may be arguing the evidence was insufficient to sustain his conviction on this charge, the argument was not preserved because appellant failed to make directed verdict motions below. Collins v. State, 308 Ark. 536, 826 SW2d 231 (1992).

CONCLUSION

For reasons stated herein and based on the authorities cited, the State respectfully submits that this case should be affirmed in all respects.

APPENDIX D

REBUTTAL OF PETITIONER JONES TO SUPPLEMENTAL ABSTRACT AND BRIEF OF STATE

* TABLE OF CONTENTS AND *

* POINTS AND AUTHORITIES OMITTED *

POINTS IN REBUTTAL

I.
WHY COURT ERRED IN
DENYING ASSISTANCE OF
COUNSEL.....4

II.
WHY COURT ERRED IN PROCEEDING
TO TRIAL.....7

III.
WHY COURT ERRED REGARDING UNIFORM
COMMERCIAL CODE.....7

IV.
WHY JURY WAS IMPROPERLY SWORN,
INSTRUCTED,AND FAILED TO OPERATE AS JURY
CONTEMPLATED BY 1791 CONSTITUTION FOR
UNITED STATES OF
AMERICA.....8

V.
WHY COURT ERRED IN SUSTAINING CONVICTION
UNDER A.C.A §5-73-
120.....11

ARGUMENT IN REBUTTAL

I.

WHY COURT ERRED IN DENYING ASSISTANCE OF COUNSEL

Appellant's religious convictions preclude His submission to false gods, or association with those who do. Licensed

attorneys uniformly submit themselves to the "State" - which is, in the end, a man-made god, existing in the minds of men. This is baalism, and anathema to Appellant's beliefs. Appellant can have no confidence in folk who serve and worship false gods. This practically precludes Appellant's *representation* by licensed servants and worshipers of the "State of Arkansas". Appellant's brief demonstrates, with man-made legal authorities, that licensed attorneys are bound by their own[not the Creator's] system of "ethics" to uphold "legal process", and are subject to discipline for overzealous attempts to overthrow such processes. The "State" asserts that Appellant "*represents himself*", contrary to the very words It supplementally abstracted at (T.128) "I want to defend myself, not as -- not represent myself.". Appellant's disinclination to accept a licensed attorney exercising "*State*

privileges" to "*represent*" Him must be distinguished from Appellant's demand for assistance during trial by a trusted, Christian person. Assistance with defense and representation by another person are conceptually diverse. This Court is requested to distinguish between these terms when reviewing Wheat v U.S., 486 U.S. 153 (1988). The language cited from that case by the "State" exclusively considers the concept of "*representation*" of "*clients*". This contemplates an advocate paid or otherwise managing a case for another. The "State" avoids discussion of "*Assistance of Counsel*" [note capitalization], and considers only "*representation by attorney*" in It's arguments. The "State" infers that previous persecutions of Appellant somehow create a presumption that Appellant intelligently waived His right to Assistance of Counsel by refusing the "offer" of "standard" licensed counsel,

that is, counsel sanctioned by the "State". Please now consider an analogous case: USA v Wallace Ward, 973 F2d 730 (9th Circuit, 1992). Therein, an Accused was refused the right to testify in His own defence for not submitting to the Court's prescribed "standard" form of oath, and was convicted. The Accused had offered to submit to an oath which was non-offensive to His convictions. The Appeals Court noted the strength of conviction implied by one who, true to his conscience, chooses conviction over abandonment of principle. That Court reversed, requiring the government use the "least restrictive means" to achieve It's ends - in *Ward* the governmental end was ascertainment of truth by use of an oath. By analogy to this case, Appellant asserted a right to Assistance of Counsel, while the State asserted a need to regulate the practice of law. As argued in the Brief, Appellant submits

that His interest in Assistance outweighs the State's interest in prohibition of unlicensed persons assisting in Appellant's defense. It is bootstrapping to urge Appellant waived his right by standing on His principles and repeatedly demanding assistance. Without Assistance of Counsel, no waiver ought to be of any effect, however procured or implied.

Appellant would object, ongoing, to the "State's" use of the term of art "pro se" in reference to Appellant's acts of defence, done in His proper person. Said acts are done "in propria persona" in the legal sense of the term, and are not the product of "self-representation", which term does not apply to Appellant.

II.

WHY COURT ERRED IN PROCEEDING TO TRIAL

That the "State" may understand, Appellant's objection is that: (1). He has not appeared generally; (2) has not plead; (3) the plea entered by the Court

was procedurally improper, as Appellant had not refused to plead, but plead to the jurisdiction (demurred), which demur was not entertained; and (4) that the "State" failed to introduce an original, sworn charging instrument, which defect the Court Itself attempted to cure, by *sua sponte* action by the trial Judge, on behalf of the "State". These procedural shortcuts prejudiced Appellant, as argued in the Brief. They were improper, and did not render the process due a criminal defendant.

III.
WHY COURT ERRED REGARDING UNIFORM COMMERCIAL CODE

Appellant urges that the Uniform Commercial Code, Ark.Code.Ann §4-1-101 et al does apply to Uniform Traffic Tickets, as affirmatively explained in detail in Appellant' Brief; the "State" piously urges this is malarkey. A clear ruling by this Court on this point could clear up much confusion. This theory was developed

independently by several legal researchers, and seems to well explain the methods used by diverse governments to sever the People from their substance. Appellant would urge the "State" only refuses to argue this point because Appellant has stated the *Truth*. The words spoken of the Pharisees by Christ seem applicable to the ominous silence on this point:

> " Ye are of *your* father the devil, and the lusts of your father ye will do. He was a murder from the beginning, and abode not in the truth, because there is no truth in him. When he speaketh a lie, he speaketh of his own: for he is a liar, and the father of it. And because I tell *you* the truth, ye believe me not." St. John 8:44,45.

IV.
WHY JURY WAS IMPROPERLY SWORN, INSTRUCTED, AND FAILED TO OPERATE AS JURY CONTEMPLATED BY 1791 CONSTITUTION FOR UNITED STATES OF AMERICA.

a.
OATH

Appellant would respond that if Courts of Record do not, in fact, keep

records they ought, it should inure to the prejudice of an Accused. This seems especially valid when dealing with an Accused who has been refused Assistance of Counsel. But for the failure on the part of the "State" and It's Court Personnel, whose duty it is to produce the record, a *verbatim* record would exist for use herein.

b.

INSTRUCTION

Appellant would urge that he had no objection to any model instruction given, and thus none was abstracted *verbatim*. However, as no model instructions presently exist for the arguments and defenses Appellant presented, the "State" ought not be heard to object about a lack of abstraction of superfluous material, which would be violative of the letter and spirit of Rule 9(d) of this Court requiring abstraction: "of only [emphasis in original] such material parts of

pleadings, proceedings, facts, documents and other matters in the record as are necessary to an understanding of all questions presented to this Court for decision.". Additionally, Appellants Abstract, page 33, covering R225:6-R232:1 contains the following language:

"The following instructions were given to the Jury:

INSTRUCTION 1 __ AMCI 101

AMCI 101(a),(b),(c),(d),(e), AND (f) were read to the Jury; then AMCI 102; AMCI103; AMCI 104; AMCI 106; AMCI 107; AMCI 108; AMCI 3152;

INSTRUCTIONS 10,11,12,13,14

AMCI 6003

" 6002"

The "State", it seems, is even now diligently about It's Father's business. St. John 8:44-45, *supra*. Appellant did in fact abstract the instructions given, and, as this Court is judicially aware of the content and scope of the AMCI,

Appellant considered it improper under Rule 9(d) to set them out *in hac verba*. If thought desirable by the Court, Appellant would tender on short notice a Supplemental Abstraction of the content of the above Model Criminal Instructions for review. Appellant has abstracted His proffered instructions. Appellant urges that It was a question of fact for the jury as to whether or not Appellant was required to be licensed, and the Jury lacked proper instruction to ascertain whether Appellant was required or not. Appellant stands by His argument that the Jury has a right to know of It's full power at common law, including the unreviewable right to acquit in criminal matters. Absent that guidance, the jury could not function in a manner as contemplated when the right was secured, in 1791, by ratification of the Constitution for the <u>u</u>nited States of America.

(C)

POWER TO ACQUIT IMPAIRED

The "State" misconstrues Appellant's words here. Appellant does not urge the Jury is to usurp the Legislative prerogatives, but simply that the Jury has the absolute right to acquit, and if that means to disregard the law in a particular instance, so be it. This is not anarchy or chaos, but societies powers being subject to the ultimate check of the People, as is appropriate to our Republican form of government. That Appellant relies on case law from this Court that is "over 100 years old" is of no import, as the Arkansas Constitution is likewise over 100 years old, and surely the "State" is not arguing that we toss out that venerable body of law as incompetent due to It's advanced age.

Ark.Code Ann. §16-89-107 purports to control the Jury's judgement and conscience, and as such, infringes upon

the Jury's unreviewable prerogative to acquit in a criminal trial. Tyrant's have ever tried to usurp the function of the Jury: fines, torture, and forfeitures were commonly used to coerce jurors to convict in England in years past. Is the "State" urging a return to such barbarism? Appellant had not argued this statute, but now urges it to be violative of the right of a Appellant to a jury trial as understood at common law, circa 1791.

V.

WHY COURT ERRED IN SUSTAINING CONVICTION UNDER A.C.A §5-73-120

Appellant will take the last objection first, arguing that any failure to make a motion for directed verdict was strictly the result of lack of Assistance of Counsel, and the "State" ought not benefit from It's own outrageous behavior. Regarding Ark.Code.Ann §5-73-120, Appellant is not here arguing that the statute is

unconstitutional *per se*, only that the trial court erred in upholding Appellant's conviction for a violation of It, in that that statute, as applied to Appellant, is, as was said in Wilson v State, 33 Ark. 557, " ... an unwarranted restriction on his constitutional right." Appellant also argues it is contrary to both Natural and common law to enforce a blanket prohibition on the carriage of weaponry. Reasonable restriction would encompass placing some legitimate restriction on the carriage of weapons, not banning the carriage thereof wholesale, save upon the occasional "journey", as is the *de facto* situation at this time. Appellant would further urge that His Natural and common law rights to carry weaponry flow from the rights reserved to the people in the Constitution for the united States of America, amendments 9 and 10, and from the Creator, who commanded His Disciples:

"'*When I sent you without purse, and scrip, and shoes, lacked ye any thing?*' And they said, Nothing. Then said he unto them,'*But now, he that hath a purse, let him take it, and likewise his scrip: and he that hath no sword, let him sell his garment and buy one.*'. St. Luke 22:35-36.

and at St Luke 22:38:

"And they said, Lord, behold, here are two swords. And he said unto them, '*It is enough*'."

The Master gave His disciples these words just before they went up to Gethsemane to pray before His betrayal and death. Does not the "State" in this case seek to make void the very Word of God through the traditions[statutes] of Men? Appellant was taught as a child to render unto Caesar what is Caesar's, and unto God that which is God's. Only where Caesar [government] claims to be divinity does a conflict manifest itself under this principle. Even as Caesar claimed to be both the "State", and "God", and thus, took offense at the Master's teachings, so now does this "State" when it takes

offense at Appellant's following of the divine command to keep handy a personal weapon. As the State will not repent of It's error, Should not this Court interpose It's protection, and set this error aright? God save this Honorable Court.

CONCLUSION

For the reasoning presented, Appellant reiterates His request for reversal and discharge in all particulars.

Original signed by Theodore Jones, in propria persona.

APPENDIX E, LETTER OF CLERK REGARDING DOCKETING OF PETITION

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 14, 1994

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

Theodore Jones
1010 Gamble Road
Little Rock, AR

RE: Theodore Jones, Petitioner v.
Arkansas, et al.

Dear Mr. Jones:

Returned are 39 copies of your petition for a writ of certiorari received in this office March 7, 1994, for failure to comply with this Court's Rules of Procedure, a copy of which is enclosed. Also enclosed is a sample petition which you may follow as to form.

If you intend to pay the $300 docket fee, the petition must be presented on paper which is 6 1/8 by 9 1/4 inches as stated in Rule 33 of the Rules of this Court. The documents in the appendix must be in the order set forth in Rule 14, and must contain case captions, case numbers and dates issued. The errata sheet preceding the appendix must be removed. The cover of the petition must bear the title of the paper. Rule 33.2.(6). The questions presented for review must appear immediately following the cover of the petition, followed by the list of parties, table of contents, table of authorities, etc. Rule 14. The current term is the October Term 1994. The page limit for a typed and double spaced petition for a writ of certiorari is 65 pages. See Rule 33.

In addition, the proof of service must be separate from the petition, not within it. Rule 29.

Corrected copies of the petition must be returned promptly in order for the case to be docketed. This office will retain one copy of the petition and your check in the amount of $300, in expectation of receipt of a properly prepared petition. See Rule 33.7.

Very truly yours,

WILLIAM K. SUTER, CLERK

By Ruth B. Jones
Ruth B. Jones
Assistant Clerk

Enclosures
cc: Winston Bryant, Esq.
Chris Piazza, Esq.

158-A

BEST AVAILABLE COPY

APPENDIX F, CONSTITUTIONAL PROVISIONS, STATUTES, ETC. RELIED UPON

1. FEDERAL CONSTITUTIONAL PROVISIONS

Constitution for the United States of America Article 6, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law if the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Constitution for the United States of America Amendment 1

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the Gpress; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution for the United States of America Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless upon a presentment or indictment of a Grand Jury, except in cases arising in the land or navel forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or

limb, nor shall be compelled in any Criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution for the United States of America Amendment 6

... In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

Amendment 9

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Constitution for the United States of America Amendment 14
Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges

of citizens of the United States; nor shall any
State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sections 2-4 omitted

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

2. FEDERAL STATUTES

*** No Federal Statutes Cited ***

ourt of the United States.

3. FEDERAL COURT RULES

No Federal Court Rules cited.

4. FEDERAL REGULATIONS (CODIFIED)

No Federal Regulations cited.

5. STATE CONSTITUTIONAL PROVISIONS

1874 Constitution of the State of Arkansas Article II, Section 10

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed; provided that the venue may be changed to any other county of the judicial district in which the indictment is found, upon the

application of the accused, in such manner as now is, or may be, prescribed by law; and to be informed of the nature and cause of the accusation against him, and to have a copy thereof; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be heard by himself and his counsel.

6. STATE COURT RULES

*** no state rules cited ***

7. STATE STATUTORY PROVISIONS

Arkansas Code Annotated (1987) Official Edition, Michie Company, 1991, §1-2-118 (Common and Statute Law of England Adopted)

The common law of England, so far as it is applicable and of a general nature, and all statutes of the British Parliament in aid of or to supply the defects of the common law made prior to March 24, 1606, which are applicable to our own form of government, of a general nature and not local to that kingdom, and not inconsistent with the Constitution and laws of the United States or the Constitution and laws of this state, shall be the rule of decision in this state unless altered or repealed by the General Assembly of this state.

Arkansas Code Annotated (1987) Official Edition, Michie Company, 1991, §16-85-707 (Criminal Pleas)

"(a)The only pleading on the part of the defendant is a demurrer or a plea.

(b) The demurrer and plea must be put in open court and may be oral, but entry thereof must be made on the record.

(c) The entry on the record of the demurrer and pleas may be substantially in the following forms:

(1) A demurrer: "The defendant demurs...";

(2) A plea of guilty:...;

(3) A plea of nolo contendere:...;

(4) A plea of not guilty:...;

(5) A plea of former acquittal or conviction:...;

(d) Neither a joinder in demurrer nor a reply to the plea of former acquittal or conviction shall be necessary; but the demurrer shall be heard and decided, and the plea shall be considered as controverted by denial and by any matter of avoidance that may be shown in evidence."